

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH: JAIPUR.

Original Application No. 51/2001

Gajanand Rathore
S/o Jaganath Rathod
R/o M.E.S. Colony,
111/1, Ajmer Road,
Nasirabad : Applicant.

rep by Mr. P.P. Mathur : Counsel for the applicant

- verses -

1. The Union of India
through Secretary to the
Government of India
Ministry of Defence,
Raksha Bhavan
New Delhi.
2. Engineer-in-Chief,
Branch Army
Head Quarter (AHQ)
Kashmir House,
New Delhi.
3. Chief Engineer,
Southern Command,
Pune - 411 001 : Respondents.

rep. by Mr. Sanjay Pareek : Counsel for the
respondents.

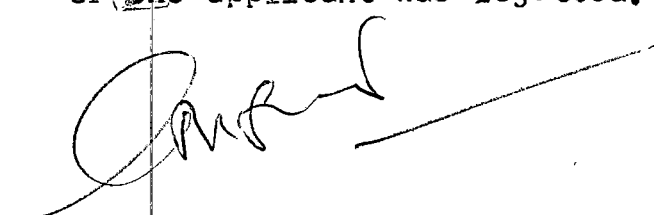
CORAM: The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman
The Hon'ble Mr. A.P. Nagrath, Administrative Member.

Date of the order: 17.09.02

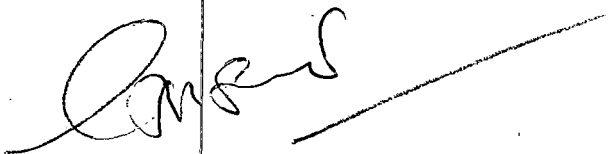
Per Mr. Justice G.L.Gupta

ORDER

This O.A. has been filed against the order
dated 13.10.2000 (Annex A.1) whereby the representation
of the applicant was rejected.



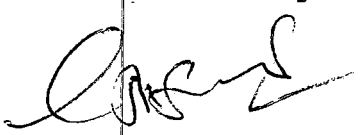
2. The applicant was initially appointed as Motor Pump Attendant (now designated as Pump House Operator) on 6.7.79. He passed the diploma course in Engineering in the year 1984 and was eligible for appointment on the post of Superintendent E/M-II. The respondents invited applications for the post of Superintendent E/M Gr.II in the year 1987. The applicant also applied for the post. He was called for the interview on 25.11.87. However, when other persons were appointed to the post he was not issued any appointment letter. On enquiry he was informed that at the time of his initial appointment he had crossed 25 years of age and therefore he was not entitled to appear for further appointment on the higher post. The applicant made representation against the said decision. Ultimately, the Chief Engineer, Bombay Zone, held that the applicant was not over-aged and therefore his initial appointment was legal. The applicant thereafter moved the authorities for granting him promotion on the post of Superintendent E/M-II in pursuance to the notification of the year 1987. He did not get favourable response. Rather he came across a notification dated 3.11.91 inviting applications for the post of Superintendent E/M II. He therefore, approached this Tribunal by filing O.A. No. 432/92 (number has been stated incorrectly as O.A. No. 132/92 in the present O.A.). The said O.A. was decided by this Tribunal on 23.8.93, directing the respondents



to offer appointment to the applicant against the one of the posts which was released in November 1991. Thereafter, the applicant was given appointment to the post of Superintendent E/M II vide communication dated 25.3.94 (Annex. A.4). The applicant joined the post and thereafter he made representation to give him seniority from the year 1987 and also the monetary benefit of the higher post from 1987. Since nothing was done, he filed another O.A. No. 66/98, which was disposed of by this Court on 28.1.2000 directing the respondents to dispose of the representation of the applicant within a period of four months by reasoned and speaking order. Pursuant to the directions of the Tribunal the respondents passed the speaking order Annex. A.1 on 13.10.2000, which is impugned in this O.A.

3. The grievance of the applicant is that he ought to have been given appointment on the higher post from 1987, the date on which persons lower in the merit were given appointment and that he ought to have been paid the monetary benefits of the said post from 1987.

4. In the reply the respondents have resisted the claim of the applicant on the ground that the applicant having accepted the appointment order dated 25.3.94, cannot challenge the same after 7 years. It is further stated that the applicant has been given seniority above his juniors and no injustice has been caused to him. Dismissal of the application has been sought on the ground that it has been filed



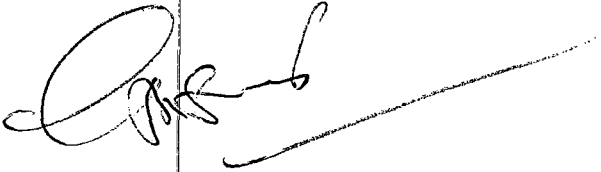
after the expiry of period of limitation. It is stated that two posts were released in the year 1991 and the applicant has been given appointment as per the directions of this Tribunal in O.A. No. 432/92.

5. In the rejoinder, the applicant has reiterated the facts stated in the O.A.

6. We have heard the learned counsel for the parties and perused the documents placed on record.

7. Mr. Mathur, learned counsel for the applicant contended that there was no fault of the applicant when he was not given promotion with reference to notification of the year 1987, and when his eligibility has been accepted, he ought to have been given promotion on the basis of interview held in the year 1987 and the monetary benefits should also have been given from 1987.

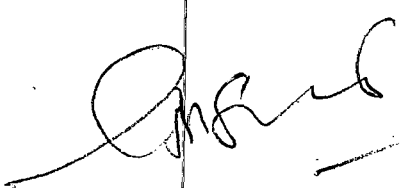
8. On the other hand, Mr. Pareek, learned counsel for the respondents contended that the respondents have implemented the directions given by this Tribunal in its order dated 23.8.93 and if the applicant was aggrieved by the order dated 23.8.93, he should have challenged the same before the Hon'ble Supreme Court or Hon'ble High Court but he did not do so and now he cannot re-agitate that he ought to have been given appointment from 1987. He submitted that the application should be rejected on the ground of limitation alone.



9. We have given the matter our thoughtful consideration. Admittedly, the applicant had approached this Tribunal when he was not given appointment to the post of Superintendent E/M II with reference to the interview held in the year 1987 and also when he came to know that another notification had been issued in the year 1991. After considering the pleadings and the arguments advanced in that case, the following order was passed:

" In view of the above, we hold that the action of the C.E. Southern Command, Pune in not approving the selection of the applicant was legally not valid as it was based on wrong premises. The applicant was entitled to be appointed against the post of Supdt. E/M Grade II on the basis of his selection in 1987 when the two vacancies were released in November 1991. We accordingly allow this application and direct the respondents to offer appointment to the applicant against one of those posts, if he is otherwise eligible, from the date from which persons selected against this notification dated 3.11.91 have been given appointment. It had already been made clear by interim order dated 13.12.91 that any selection made in response to Annex. A.1 will be subject to final decision of the O.A and the persons selected were required to be informed in this regard. The order of appointment shall be issued within three months of this order. "

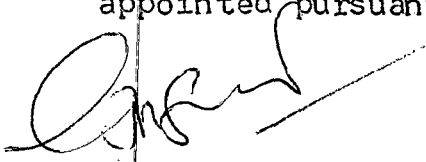
10. It is evident that the respondents were directed to give appointment to the applicant on the post of Superintendent E/M Gr.II on the basis of the selection made in the year 1987, when the two vacancies were released in November 1991. It is noticed that no vacancy was available till November 1991. The Court did not think it proper to give direction to the respondents to treat



the appointment of the applicant from 1987. When the specific order was passed that the applicant be given appointment against the two vacancies released in November 1991 and from the date persons selected against the notification dated 3.11.91, it is evident that the Court did not accept the claim of the applicant for giving him promotion from the year 1987. If the applicant had any grievance against the order of the Tribunal he should have challenged the order giving him appointment from the year 1991. The order of the Tribunal had attained the finality. The applicant cannot be permitted to re-agitate the matter in this O.A.

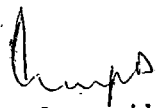
11. It is significant to point out that no fresh cause of action has arisen to the applicant by the order dated 13.10.2000. The applicant had prayed in O.A. No. 66/98 that he be given promotion to the post of Superintendent E/M Gr.II from June 1988, but no decision was given by this Tribunal on merits. The respondents were directed to dispose of the representation Annex. A.3 (therein). The respondent authorities could not decide the matter beyond the directions given in the order of the Tribunal dated 23.8.93, passed in O.A. No. 432/92. Therefore, in fact, no fresh cause of action has arisen by the order dated 13.10.2000

12. It is noticed that the applicant has been given seniority at par with the persons who were appointed pursuant to the notification dated 3.11.91.



It is not the case for the applicant that he has not been treated at par with persons who were appointed pursuant to the notification dated 3.11.91. As a matter of fact, it is also not stated in clear terms that any person junior to the applicant had been given promotion to the post of Superintendent E/M Gr.II pursuant to the interview held in 1987.

13. Having gone through the entire material on record, we do not find any case in favour of the applicant. Consequently the O.A is dismissed. No order as to costs.


(A.P. Nagrath)
Administrative Member


(G.L.Gupta)
Vice Chairman

jsv.