

AFR
RESERVED
Court No. 2

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

TRANSFERRED APPLICATION NO 473 of 2010

Friday, this the 18th day of March 2016

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Lt Gen Gyan Bhushan, Member (A)

Hav B.P. Mishra (No. 14298497W), S/O R.K. Mishra R/O
Village :Bhagdeva, P.O. Rajadhau, Distt: Rewa, MP.

.....Petitioner

Ld. Counsel for the: **Col (Retd) Y.R. Sharma, Advocate**
Petitioner

Versus

1. Union of India Through: Secretary Ministry of Defence,
New Delhi.
2. Chief of Army Staff, Army Headquarters, New Delhi.
3. OIC Signal Records, 1 STC, Jabalpur.

...Respondents

Ld. Counsel for the: **Shri D.K. Pandey, Central**
Respondents. **Govt Counsel assisted by**
Lt Col Subodh Verma,
OIC, Legal Cell.

ORDER**(Per. Devi Prasad Singh, J.)**

1. Aggrieved by his initial supersession to the rank of Havildar due to non attendance of N Cadre Course and loss of seniority as compared to his batch mates which led to his becoming over age for promotion to the rank of Nb Sub, the petitioner filed Writ Petition No. 1091 of 2004 in the High Court of Madhya Pradesh at Jabalpur. The petition has been transferred to this Tribunal in pursuance to Section 34 of Armed Forces Tribunal Act, 2007 (in short Act) and has been registered as T.A. No 473 of 2010.

2. We have heard Ld. Counsel for the petitioner Col (Retd) Y.R. Sharma and Ld. Counsel for the respondents Shri D.K. Pandey assisted by Maj Soma John, OIC Legal Cell.

3. Admittedly the petitioner was enrolled in the Corps of Signals on 11.02.1978. After completing training and serving various units, the petitioner was promoted to the rank of Naik in the year 1989. As per laid down policy for promotion, in the rank of Naik, he was required to qualify on N Cadre Course for promotion to the rank of Havildar. However, the petitioner could not undergo for N Cadre Course necessary for promotion to the next rank of Havildar on account of his posting to Army Headquarters, Military Secretary Branch on ERE in June 1989.

4. Some of the petitioner's batch mates had completed N Cadre Course in the year 1991 and prior to that. On representation, the petitioner was informed that Records, Signal Regt shall do needful by providing opportunity to complete N Cadre Course. However, being posted in the Army Headquarters, petitioner was neither spared nor allowed to complete N Cadre Course.

5. Some of his batch mates were detailed on N Cadre Course in May 1991 and prior to that also. However the petitioner was detailed on N Cadre Course on 09.08.1992 when he was on posting to Army Headquarters and completed it successfully. Thereafter in September 1993, the petitioner was posted to Records, the Signal Regiment on 20.02.1994 to earn his criteria report i.e. Regimental report. He was promoted to the rank of Havildar with seniority with effect from August 1992 the date on which he qualified N Cadre Course. On 06 July 1998, the petitioner was detailed for S Cadre Course for promotion to the rank of Nb Subedar and he successfully qualified on this Course. While undergoing S Cadre Course, the petitioner came to know that his batch mates were given seniority from 01.04.1991. Aggrieved petitioner submitted applications from time to time and in consequence thereof, he received communication dated 05.07.2001 (Annexure No P2 of O.A.) from the record that it is the responsibility of the individual

to complete N Cadre Course and not of the department, hence no injustice has been done.

6. Statutory complaint dated 24.11.1991 submitted by the petitioner to the Chief of the Army Staff was rejected vide order dated 08.08.2002 by cryptic and unreasoned order. Later on the petitioner approached to High Court and now matter has been transferred to this Tribunal for adjudication (supra).

7. Submission of Ld. Counsel for the petitioner is that in accordance with para 1 to Appendix 'B' to SO-in-C's GPI No 22, it is for the Commanding Officer/Commandant as per datum line provided by Records Signals to send personnel for N Cadre Course. While posted in Army Headquarters, the petitioner was neither sent nor asked for to complete N Cadre Course which could have been done while posting in Regiment. It is argued and pleaded that the petitioner was put to suffer on no fault on his part. Posting to Army headquarters was not within his command and control and it was the duty of the respondents to ask and permit him to undergo N Cadre Course. Ld. Counsel for the respondents reiterated the submission in Counter Affidavit and submitted that burden was on the petitioner to complete the N Cadre Course and since the petitioner has not completed it while serving in unit, he was not entitled for promotion. The petitioner completed the N Cadre Course only on 09.08.1992 hence he is granted seniority from

the said date. However it is not disputed by Ld. Counsel for the respondents that the batch mates of the petitioner have been granted promotion and seniority from May 1991. It is also not disputed that criteria for consideration for promotion to the rank of Havildar is to complete N Cadre Course. For convenience sake para 'B' to SO in C GPI No 22 is relevant and reproduced as under:

"1. To ensure uniformity in the standard of basic military and technical knowledge amongst the NCOs being considered for promotion to the rank of Havildar, an eight weeks cadre to be called 'N' Cadre will be conducted under the arrangement of CSO Commands who may delegate responsibility to Major Signal units commanded by Lieutenant Colonels and above and to Commandants, Signal Training Centres, other rank in promotion zone as per the datum line provided by Signals Records will undergo this cadre. Qualifying on this course is obligatory for promotion to the rank of Havildar. However, qualifying on above cadre will not entitle an individual for automatic elevation rank."

8. A plain reading of aforesaid provision shows that N Cadre Course will be conducted under the CSO Command who may delegate it to major signal unit as per datum line provided by Signal Records. The entire burden was on the Signal Record and the CSO Command to send the petitioner to complete N Cadre Course. At no stage liability or burden was on the petitioner to make a prayer to send him for N Cadre Course.

9. Para 5 of the aforesaid Appendix provides that N Cadre Course will be conducted by the unit commanded through Lt Colonel with certain procedural responsibility. For convenience sake para 5 is reproduced as under:-

“5. The 'N' cadre will be conducted only in units commanded by Lieutenant Colonel. At the end of cadre course, there will be oral/practical and written tests, which candidates must pass to successfully complete the course. The unit board for conduct of the test will be composed of Signal officer/JCOs as under:-

- (a) Presiding Officer - A major or above rank
- (b) Members - (i) One Officer of the rank not below Captain.
(ii) One JCO not below the Rank of Subedar.
- (c) Convening Authority – Signal unit Commander not below the rank of Lieutenant Colonel.
- (d) Eligibility for Qualifying:-
 - (i) To qualify in the test, a candidate must pass in all subjects.
 - (ii) The minimum pass marks will be 40 percent of the possible marks in each subjects.
 - (iii) If a candidate fails in one or more subjects, he will be retested only in the subject(s) in which he has failed. The failures need not be put through entire cadre course again. He will however, be given extra coaching in the subject(s) in which he is required to re-appear. A maximum of two more chances will be given to appear in the direct test for qualifying on the course.
 - (iv) No grading will be given in the result sheet but only 'Qualified' or 'Not- Qualified' will be awarded.
 - (v) The board proceedings must be countersigned by the convening authority.

10. It is not disputed that the petitioner was posted in Army Headquarters, therefore in terms of para 5, he was not sent to undergo N Cadre Course. Why appropriate step was not taken to send the petitioner is not understandable.

11. However fact remains that because of posting in the Army Headquarters, petitioner was not sent for N Cadre Course and respondents also did not make any effort to look into the matter by taking appropriate decision to send the petitioner to undergo Cadre alongwith his batch mates. The records were summoned but the same have not been produced and a defence has been set up that in view of sanction accorded by competent authority as per para 592 of DSR-1987 (Revised) Vol-II, the records have been weeded out on 16.01.1998 (Annexure R-3) in pursuance to decision of appropriate destruction board.

12. The non-availability of the record does not make out a difference since relevant factual matrix has not been disputed by the respondents while filing Counter Affidavit and defence has been set up. It was not fault of the petitioner in not proceeding to attend N Cadre Course.

13. Whole sole liability was on the appropriate authority of the respondents to send the petitioner for N Cadre Course. Para 8 of Appendix 'B' (Annexure No SCA-3) to Counter Affidavit provides that NCOs fulfilling the requisite qualification will be detailed by Signal Records based on their seniority. For

convenience sake para 8 of the Appendix 'B' of SCA-3 is reproduced as under:-

“Detailment

“8. NCOs (Naiks) fulfilling the minimum qualifications will be detailed by Signals Records based on their seniority. NCOs overdue for promotion to the rank of Havildar as per the datum line would be given priority by Records. In case of F of S and Y of S category personnel, the rule pertaining to datum line is not applicable. They will be put through the N Cadre course at the earliest opportunity immediately after completion of F of S/Y of S course. Operators qualified on Cipher remustering course will attend only the N cipher course at Signal Training Centre”.

14. Accordingly it appears a serious lapse on part of the respondents and their authorities for violating of statutory mandate in not sending the petitioner to N Cadre Course alongwith batch mates. There appears to be violation of statutory mandate resulting in miscarriage of disputes for which in any case petitioner may not be held responsible.

15. While rejecting the representation dated 01.05.2001 ignoring the aforesaid provisions, petitioner was informed vide letter dated 08.06.2001 that to achieve qualification for promotion was the responsibility of the petitioner and his unit concerned. It is not understandable as to why the petitioner has been held responsible for no fault of his own since the respondents and his unit has not sent the petitioner for the N Cadre Course. Letter dated 01.06.2001 in its totality is reproduced as under:-

"Tele Mil : 2309

Signals Abhilekh Karyalaya

Signals Records

Post Bag No 5

Jabalpur (MP)- 482001

2665 /CA-7 (P)/T-4C/139

08 Jun 2001

627 (I) Mech AD Bde Sig Coy

C/o 56 APO

CONSIDERATION OF SENIORITY : HAV

1. Ref your letter No 331/Sigs/A dt 03 May 2001.
2. The case of No 14298197W Nk (now Hav) (OCC) B P Mishra of your unit has been examined in details. The NCO was lacking N Cadre at the time of his initial screening alongwith his contemporaries for promotion to the rank of hav. He passed N Cadre on 09 Aug 92 and accordingly he was promoted to the rank of Hav wef 20 Feb 94 with ante-date seniority wef 09 Aug 92 i.e. date passing N Cadre.
3. This office is informing all concerned units regarding lacking qualifications of their indls from time to time. To achieve qualifications for promotion is the responsibility of indl and his unit concerned. As such responsibility to pass N Cadre late by the indl rest with the indl and his unit.
4. In view of the above, it is pertinent to mention that the said NCO had correctly been promoted to the rk of Hav and the request of the NCO to grant him ante date seniority wef 01 Apr 91 alongwith his batch mates is not in order as per existing promotion policy, as he was not qualified the mandatory requisite qualifications on that date.
5. Please info NCO accordingly.

Sd/- x x x

Major

Senior Record Officer

For OIC Records"

16. It is not so that the respondents were not competent to relax the age for promotion to the rank of JCO. The Circular 8/14 September 2014 which is on record shows that Chief of the Army Staff has right to relax the age limit to promote the applicant in pursuance to recommendations sent by the unit or appropriate authority. Army Order shows that relaxation may be granted in special cases when it is considered absolutely essential. For convenience sake, para 2 and 3 of the aforesaid Army Order is reproduced as under:-

“2. In order to cut down unnecessary correspondence on this account at all levels and to safeguard the interests of junior personnel, it will be ensured that such requests are carefully scrutinized before submission and only exceptionally genuine cases are referred to this Headquarters for sanction. Recommendations of this nature, when initiated, will be submitted through normal staff channels to personal sections at this Headquarters and will invariably contain the following information:-

(a) Special reasons for the grant of relaxation of the individual for whom the relaxation is sought is well decorated and/or has achieved championship in some event and/or has been earning outstanding/above average reports for several years.

(b) Whether or not other qualified/eligible personnel are available for promotion.

(c) If qualified/eligible persons are available, a certificate accompanied by necessary details, will be submitted to the effect that no promotion block will be caused by the grant of relaxation. In other proposed relaxation should not adversely effect the prospects of Junior personnel.

(d) IAFD 903 (Character Rolls) for the last 3 years in respect of the individuals recommended and the other 3 senior most qualified and eligible Havildars for promotion to JCO rank will also be forwarded.

3. Recommendations for relaxation of age/service limits for promotion to the rank of Jamadar in respect of Havildar of clerical and storemen technical categories will be submitted in view of the provisions of this HQ letter of even number dated 19 Jan 62 laying down the conditions of exceptionally merited cases.

17. With regard to relaxation, respondents admitted in para 11 of the Counter Affidavit that Chief of the Army Staff has right to relax age in special circumstances. In para 22 of the Counter Affidavit presumption has been raised that Chief of the Army Staff probably thought it fit and proper not to exercise discretion in favour of the petitioner.

“22. Grounds 6. I & J. Even though Chief of Army Staff has power to relax the age limit in certain conditions, the Chief of Army Staff probably thought it fit and proper not to exercise that discretion in favour of the petitioner, because the petitioner alone is responsible for his non-promotion at the relevant time along with his batch mate.

18. The contents of para 22 shows mechanical approach on part of the respondents. There can be no special case than the present one where only because the petitioner was posted in Army Headquarters and served the nation with his work, has been deprived N Cadre Course resulting in denial of promotion. It is a fit case where powers should have been exercised by

Chief of the Army Staff so that the petitioner may not suffer from irreparable loss. Nothing has been brought on record to indicate that matter was referred to Chief of the Army Staff for relaxation. Reply is very casual.

Promotional avenues

19. Promotion cannot be claimed as a matter of right, nor it is a condition of service. However, an eligible person has a right to be considered for promotion strictly in accordance with law. In the case reported in AIR 1988 SC 1033: JT 1988 (I) SC 22 1988 (1) Serv LR 347, ***Raghunath Singh vs Secretary Home (Police Department) Government of Bihar***, Hon'ble Supreme Court stressed upon the need for providing promotional avenue by observing that promotion "generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly.

20. In ***Council of Scientific and Industrial Research v. K.G.S. Bhatt***, AIR 1989 SC 1972; 1989 Lab IC 2010 the Supreme Court placed reliance on various writings of known authors and observed that every management must provide real opportunities for **promoting employees** to move upward. The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of

administrative cause, mis-allocation of personnel, low moral and ineffectual performance among both non-managerial employees and their supervisors. There cannot be any modern management must less in career planning man power development, management development etc. which is not related to a system of promotions.

21. In ***Dr. Ms. O.Z. Hussain v. Union of India***, AIR 1990 SC 311: 1990 Lab IC 322 the Supreme Court again stressed upon the need of providing promotional avenues to increase efficiency in public service as the stagnation reduces efficiency and makes the service ineffective. In ***Uttarakhand Mahila Kalyan Parishad vs. State of Uttar Pradesh***, AIR 1992 SC 1695: (2012) 78 All Cr C 460: (2012) 3 All Cr LR 10 there had been rules discriminating the promotional avenues on the ground of sex and the lady teachers and employees in the Education Department doing administrative business were not given the same opportunities for promotion which the male employees had been given. The Supreme Court deprecated the practice and passed the appropriate order to provide the similar opportunities for promotion again emphasising the need of providing for promotional avenues. In ***T.R. Kothandarman vs. Tamil Nadu Water Supply & Drainage Board***, (1994) 6 SCC 282: 1994 AIR SCW 4367, the Supreme Court again considered the issue in detail and taking into account the

importance of educational qualification, came to the conclusion that higher educational qualification can be the basis not only for barring promotion but also for restricting the scope of promotion. However, the Court further held that restriction so placed should not, however, go to the extent of seriously jeopardizing the chances of promotion and to decide this, the extent of restriction should have also to be looked into to ascertain whether it is reasonable.

22. The delay in promotional denials the efficiency in service and promotional avenues faster the appropriate attitude to accord for achievement excellence in service. In the absence of promotional prospects the service is bound to do the denial and stagnation which kills the desire to serve properly.

23. Constitution Bench of Hon'ble High Court in the case reported in 1999 (7) SCC 209 ***Ajit Singh and others vs. State of Punjab*** (ii) held that right to be considered for promotion is fundamental right. Hon'ble High Court further held that where promotion is to be done in order to seniority subject to fitness that equal opportunity should be given and the senior most person should be at the level first than others in the list of seniority. For convenience sake relevant portion of judgment of ***Ajit Singh*** is reproduced as under:-

“22. Article 14 and Article 16 (1) are closely connected. They deal with individual rights of the person. Article 14 demands that the “State shall not deny to any person equality before the law or the equal protection of the laws”. Article 16 (1) issues a positive command that:-

“there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State”.

It has been held repeatedly by this Court that clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said clause particularises the generality in Article 14 and identifies, in a constitutional senses “equality of opportunity” in matters of employment and appointment to any office under the State. The word “employment” being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the state of initial level of recruitment. Article 16 (1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be “considered” for promotion. Equal opportunity here means the right to be “considered” for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be “considered” for promotion, which is his personal right.

23. Where promotional avenues are available, seniority becomes closely interlinked with promotion provided such a promotion is made after complying with the principle of equal opportunity stated in Article 16 (1). For example, if the promotion is by rule of “seniority-cum-suitability”, the eligible seniors at the basic level as per seniority fixed at that level and who are within the zone of consideration must be first considered for promotion and be promoted if found suitable. In the promoted category they would have to count their seniority from the date of such promotion because they get promotion through a process of equal opportunity. Similarly, if the promotion from the basic level is by selection or merit or any rule involving consideration of merit, the senior who is eligible at the basic level has to be considered and if found meritorious in comparison with others, he will have to be promoted first. If he is not found so meritorious, the next in order of seniority

is to be considered and if found eligible and more meritorious than the first person in the seniority list, he should be promoted. In either case, the person who is first promoted will normally count his seniority from the date of such promotion. (There are minor modifications in various services in the matter of counting of seniority of such promotees but in all cases the senior most person at the basic level is to be considered first and then the others in the line of seniority). That is how right to be considered for promotion and the "seniority" attached to such promotion become important facets of the fundamental right guaranteed in Article 16 (1).

24. Respondents should have taken note of the aforesaid judgment of Hon'ble Supreme Court while considering the promotion to the rank of JCO and it should have been done in order of seniority. In case petitioner was facing certain problem on account of functional action that is posting at Army Headquarters then that should have been corrected appropriately to extend the benefits of promotional avenue to the petitioner in order of seniority. This could have been done by the respondents by relaxing in age (supra).

25. Hon'ble Delhi High Court in the case reported in Mil LJ 2009 Del 40 in the case of ***Ex- HavTilak Raj Singh Versus Union of India and Ors*** held that the petitioner before the Delhi High Court was deprived for promotional avenue because of his ERE posting and the consequent upon non earning of Regimental ACRs. The promotion was deemed to be denied unjustly alongwith denial of opportunity of survival in higher rank and consequent extension of service. Their Lordships of

Delhi High Court further held that on account of commission/omission of the parties the applicant was deprived from extension of service which would have been given to him to increase salary alongwith perks. Accordingly their Lordships entitled the petitioner of said Writ Petition to give all the benefits which would have been accrued to him but for the illegal action of the respondents. Their Lordships also imposed cost of Rs. 1,00,000/- on account of denial of promotional avenue. The relevant paragraphs 7 and 8 of the case of **Ex- Hav Tilak Raj Singh** (supra), for convenience sake, are reproduced as under:

“7. The petitioner served at the ERE as a Training Staff ACRs for three and half years and thereafter he joined the unit. The respondents in their own wisdom again decided to send him to Mhow for nine months possibly because his presence would have been useful to the respondents. The petitioner has been unjustifiably denied his promotion which was given to his contemporaries in August, 2001. The petitioner since then stands retired from 29-2-2004.

8. The illegal and unjustified action of the respondents has not only denied the petitioner the opportunity of serving in the higher rank but has also deprived him extension of his service which would have ensured to his benefit alongwith the increased salary and other pers. In this day and age where the respondents has a problem of getting the requisite qualified persons it is highly deplorable that they should deal with their officer in the manner as has been done in this case. We see no reason why the petitioner must not be given all the benefits which would have ensured to him but for the illegal action of the respondents.

26. While passing an order in Writ Petition Service Bench No. 686 of 2013, a Division Bench of Allahabad High Court,

Lucknow Bench, one of us (Justice Devi Prasad Singh), held as under:

"17. Apart from the above, the factual controversy and litigation with regard to the promotional avenues, attention has been invited to case reported in 2003(21) LCD 944 : Beg Raj Singh Vs. State of U.P. and others whereby their Lordships of Hon'ble Supreme Court has held that the rights of the parties should be determined by reference to the date on which the petitioners entered into the portals of the court. Relevant portion of the aforesaid judgment (supra) is reproduced as under :-

"6.....The ordinary rule of litigation is that the rights of the parties stand crystallized on the date of commencement of litigation and the right to relief should be decided by reference to the date on which the petitioner entered the portals of the Court. A petitioner, though entitled to relief in law, may yet be denied relief in equity because of subsequent or intervening events i.e. the events between the commencement of litigation and the date of decision. The relief to which the petitioner is held entitled may have been rendered redundant by lapse of time or may have been rendered incapable of being granted by change in law. There may be other circumstances which render it inequitable to grant the petitioner any relief over the respondents because of the balance tilting against the petitioner on weighing inequities pitted against equities on the date of judgment."

18. In a recent judgment reported in (2010) 4 Supreme Court Cases 290 : Union of India and another Vs. Hemraj Singh Chauhan and others, Hon'ble Supreme Court has observed that right to be considered for promotion is a fundamental right guaranteed by Article 16 of the Constitution of India. Relevant portion of the said judgment is reproduced as under:-

"35. The Court must keep in mind the constitutional obligation of both the appellants/Central Government as also the State Government. Both the Central Government and the State Government are to act as model employers, which is consistent with their role in a welfare State.

"36. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution.

"37. In Govt. Branch Press v. D.B. Belliappa a three-Judge Bench of this Court in relation to service dispute, may be in a different context, held that the essence of guarantee epitomised under Articles 14 and 16 is "fairness founded on reason" (see SCC p.486, para 24).

"38. It is, therefore, clear that legitimate expectations of the respondents of being considered for promotion have been defeated by the acts of the Government and if not of the Central Government, certainly the unreasonable inaction on the part of the Government of State of Uttar Pradesh stood in the way of the respondents chances of promotion from being fairly considered when it is due for such consideration and delay has made them ineligible for such consideration. Now the question which is weighing on the conscience of this Court is how to fairly resolve this controversy."

27. In view of the above, the petitioner cannot be deprived from benefits available to him with regard to promotional avenue because of commission/omission on part of the respondents. In the present case respondents have deprived the petitioner to proceed on N Cadre Course by posting at Army Headquarters.

Discrimination

28. Petitioner has been denied promotion with his batch mates for no fault on his part. Burden was on the respondents and their authorities to send the petitioner for N Cadre Course

with follow up action which seems to not have been done. It was for the respondents and their authorities to take appropriate decision along with batch mates for sending to N Cadre Course by removing the difficulties, if any, by providing equal treatment.

29. By not sending for N Cadre Course and granting promotion along with batch mates for no fault on the part of petitioner, respondents have treated the petitioner unequally. It is well settled proposition of law that equals cannot be treated unequally vide 1990 volume 2 SCC 715 para 13 ***Direct Recruit Class (ii) Engineer vs State of Maharashtra***. Since the petitioner was not given opportunity to complete N Cadre Course as well as seniority with his batch mates and because of their commission and omission, the petitioner has suffered, it also amounts to discrimination on account of unequal treatment; hence hit by Article 14 of the Constitution of India.

Cost

30. From the factual matrix on record, there appears no room of doubt that petitioner suffered with mental pain and agony on account of inaction on part of the respondents by not considering the petitioner for promotional avenue with appropriate decision at the relevant point of time for no fault on his part, as such, the petitioner is entitled for exemplary cost.

31. Hon'ble Supreme Court in the case of ***Ramrameshwari Devi and others V. Nirmala Devi and others***, (2011) 8 SCC 249 has given emphasis to compensate the litigants who have been forced to enter litigation. This view has further been rendered by Hon'ble Supreme Court in the case reported in ***A. Shanmugam V. A. represented by its President and others***, (2012) 6 SCC 430. In the case of ***A. Shanmugam*** (supra) Hon'ble the Supreme Court considered a catena of earlier judgments for forming opinion with regard to payment of cost; these are:

1. ***Indian Council for Enviro-Legal Action V. Union of India***, (2011) 8 SCC 161;
2. ***Ram Krishna Verma V. State of U.P.***, (1992) 2 SCC 620;
3. ***Kavita Trehan V. Balsara Hygiene Products Ltd.*** (1994) 5 SCC 380;
4. ***Marshall Sons & CO. (I) Ltd. V. Sahi Oretrans (P) Ltd.***, (1999) 2 SCC 325;
5. ***Padmawati V. Harijan Sewak Sangh***, (2008) 154 DLT 411;
6. ***South Eastern Coalfields Ltd. V. State of M.P.***, (2003) 8 SCC 648;
7. ***Safar Khan V. Board of Revenue***, 1984 (supp) SCC 505;
8. ***Ramrameshwari Devi and others*** (supra).

32. In the case of ***South Eastern Coal fields Ltd*** (supra), the apex Court while dealing with the question held as under :

“28. ...Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation.

Unscrupulous litigants may feel encouraged to interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation”.

33. In the case of **Amarjeet Singh V. Devi Ratan**, (2010) 1 SCC 417 the Supreme Court held as under :-

“17. No litigant can deprive any benefit from mere pendency of case in a court of law, as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of its own wrongs by getting an interim order and thereafter blame the court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim actus curiae neminem gravabit, which means the act of the court shall prejudice no one, becomes applicable in such a case. In such a fact situation the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party involving the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the court”.

34. The question of award of cost is meant to compensate a party who has been compelled to enter litigation unnecessarily for no fault on its part. The purpose is not only to compensate a litigant but also to caution the authorities to work in a just and

fair manner in accordance to law. The case of ***Ramrameshwari Devi and others*** (supra) rules that it is the party who is litigating, is to be compensated.

35. In the case of ***Centre for Public Interest Litigation and others v. Union of India and others***, (2012) 3 SCC 1, the Hon'ble Supreme Court after considering the entire facts and circumstances and keeping in view the public interest, while allowing the petition, directed the respondents No 2, 3 and 9 to pay a cost of Rs. 5 crores each and further directed respondents No 4, 6, 7 and 10 to pay a cost of Rs. 50 lakhs each.

36. In the case reported in ***National Textile Corporation (Uttar Pradesh) Limited V. BhimSen Gupta and others***, (2013) 7 SCC 416 the Hon'ble Supreme Court took note of the fact that the Textile Corporation has not placed the correct facts before the Court and so the contempt petition was dismissed and the cost was quantified at Rs 50,000/-.

37. The promotional avenue as observed by Hon'ble Supreme Court (supra) enhances the efficiency. However in lieu of promotion the employee gets certain monetary benefits as well as status and honour of higher rank which is more important for army personnel. **Michael Edward** rightly said, to quote, "People will not readily bear pain unless there is hope."

Laurence Sterne said, to quote, “Pain and pleasure, like light and darkness, succeed each other.”

Stagnation in promotion or denial of promotion makes the life monotonous and in spite of hard work and good conduct, in case an employee is not promoted to higher rank for extraneous reasons, then he/she suffers with depression and frustration.

38. Poverty/financial crisis is second outcome of denial of promotion depends upon fact of each case. Some times because of family liabilities like, education, daughter’s marriage, construction of house, loan and different facets of life a person may not be able to live a human life, and work hard for promotional avenues to fulfill dream. Otherwise also it is well settled that right to life includes quality, dignity and human element and not animal’s life. Poverty or financial crisis multiplies the problem of man’s life more so when he is denied higher promotional avenues for no fault on his part. Couplets of **Thomos Gray** refers the plight of poor people, to quote,

“Let not Ambition mock their useful toil.
 Their homely joys and destiny obscure;
 Nor Grandeur hear with disdainful smile,
 The short and simple annals of the poor.”

William Corbett rightly said,

“To be poor and independent is
 very nearly an impossibility.”

That is why **Leo Tolstoy** said,

“Yes, we will do anything for the
poor man, (to eradicate financial crisis)
anything but get off his back.”

Because of denial of promotional avenue, the applicant has been fighting since decades for the cause of justice, suffering from mental pain and agony apart from loss of status and rank.

39. In view of the above, the T.A. deserves to be allowed hence **allowed**.

Impugned order dated 05.06.2000 denying seniority to the petitioner as well as order dated 08.08.2002 passed by the Chief of the Army Staff on the statutory complaint of the petitioner are hereby set aside. The respondents are directed to grant seniority to petitioner from the date his batch mates were promoted i.e. May 1991 with all consequential benefits including promotional avenues. Since the petitioner has attained the age of superannuation, hence benefits shall be given to him notionally for the purpose of post retiral dues along with arrears of salary. Let the consequential benefits alongwith arrears of salary be provided to the petitioner expeditiously, say, within four months from the date of production of a certified copy of this order.

The petitioner is entitled to receive cost which we quantify to Rs. 50,000/- (Rupees fifty thousand only). The cost shall be deposited by the respondents within 4 months in this Tribunal and shall be released in favour of the petitioner by the Registry.

T. A. is **allowed** accordingly.

(Lt Gen Gyan Bhushan)
Member (A)

ukt/-

(Justice D.P. Singh)
Member (J)