



**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

O.A. No.60/753/2017

Date of decision: 10.1.2020

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MR. MOHD. JAMSHED, MEMBER (A).**

...

1. Vishwajeet Kumar, aged 51 years, S/o Late Sh. Ranjeet Singh, working as Lower Divisional Clerk (Stores), O/o Area Depot Manager, Canteen Store Department Depot, Hisar, R/o H. No.3600, Housing Board Colony, Sector-14, Hissar-125001 (Group-C)
2. Keshav D. Niranjana, aged 53 years, S/o Sh. Ram Dass, working as Lower Divisional Clerk (Stores), O/o Area Depot Manager, Canteen Store Department Depot, Jalandhar R/o Quarter No.24, CSD Residence Colony, Hudson Road, Near Station Gurudwara, Jalandhar Cantt. (Group-C)
3. R. Parkash, aged 50 years S/o Sh. T.S. Raghavan, working as Lower Divisional Clerk (Stores), O/o Area Depot Manager, Canteen Store Department Depot, Army Supply Road, Dimapur, Nagaland, R/o H. No.72, PWD Road, Nepali Basti Dimapur, Nagaland (Group-C)
4. Pankaj Kumar, aged 44 years, S/o Sh. J.P. Aggarwal, working as Lower Divisional Clerk (Stores), O/o Area Depot Manager, Canteen Store Department Depot, Dehradun, R/o H. No.126, Rajeshwari Puram, Mohkampur, Haridwar Road, Dehradun (Group-C).



(All working under General Manager, Ministry of Defence,
Govt. of India, Canteen Stores Department, Mumbai)

... APPLICANTS

VERSUS

1. Union of India, through its Secretary, Ministry of Defence, Government of India, Parliament Street, New Delhi.
2. The General Manager, Government of India, Ministry of Defence, Canteen Stores Department, "ADELPHI", 119, M.K. Road, Mumbai-400020.
3. Assistant General Manager (Personnel), Canteen Stores Department, "ADELPHI", 119, M.K. Road, Mumbai.
4. Ravi Narayan, working as Store Keeper Grade-III, Office of Area Depot Manager, Canteen Stores Department Depot, Jalandhar Cantt. (Punjab).
5. Sanjay Jairwan, working as Lower Divisional Clerk (Stores), Office of Area Depot Manager, Canteen Stores Department Depot, Dehradun.
6. Santosh Kumar Jindal, working as Lower Divisional Clerk (Stores), Office of Area Depot Manager, Canteen Stores Department Depot, Agra.
7. Rattan Kumar Jha, working as Lower Divisional Clerk (Stores), Office of Area Depot Manager, Canteen Stores Department Depot, Kolkatta.
8. Gajpal Singh, working as Lower Divisional Clerk (Stores), Office of Area Depot Manager, Canteen Stores Department Depot, Dehradun.



9. Sanjay Narula, working as Lower Divisional Clerk (Stores), Office of Area Depot Manager, Canteen Stores Department Depot, Meerut.
10. Mahesh K. Srivastava, working as Lower Divisional Clerk (Stores), Office of Area Depot Manager, Canteen Stores Department Depot, Lucknow through Regional Manager (East), CSD Depot Complex, Narangi, P.O. Satgaon, Guwahati, Assam-781072.
11. Vijay K. Sharma, working as Lower Divisional Clerk (Stores), Office of Area Depot Manager, Canteen Stores Department Depot, Kolkata.
12. Vidyapathi Mishra, working as Lower Divisional Clerk (Stores), Office of Area Depot Manager, Canteen Stores Department Depot, Baghdogra (West Bengal).
13. Jitendra K. Shah, working as Lower Divisional Clerk (Stores), Office of Area Depot Manager, Canteen Stores Department Depot, Ahmedabad, Gujrat.
14. Amar Kotya D, working as Lower Divisional Clerk (Stores), Office of Area Depot Manager, Canteen Stores Department Depot, Ahmedabad, Gujrat.
15. Nevil R Daudani, working as Lower Divisional Clerk (Stores), Office of Area Depot Manager, Canteen Stores Department Depot, Ahmedabad, Gujrat.
16. Veghela B Karsan, working as Lower Divisional Clerk (Stores), Office of Area Depot Manager, Canteen Stores Department Depot, Ahmedabad, Gujrat.

... RESPONDENTS

PRESENT: Sh. Barjesh Mittal, counsel for the applicants.
 Sh. Sanjay Goyal, counsel for the official respondents.
 Private respondents-ex-parte.



ORDER (Oral)

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SANJEEV KAUSHIK, MEMBER (J):-

1. The applicants have filed the present O.A. seeking the following relief:-

- "8(ii) The impugned order dated 09.10.2017 (A-1) passed by office of Respondent no.2 and impugned amended list of eligible candidates for the post of SK-III as on 01.4.2017 annexed thereto, to the extent it places the applicants below private respondents be quashed/set aside by this Court.
- (iv) The impugned order dated 04.1.2018 (A-2/1) issued by office of respondent no.2 rejecting the objections submitted by the applicants be quashed/set aside.
- (v) Impugned amended seniority list issued vide order dated 26.5.2016 (A-1/1) and impugned seniority list issued vide communication dated 21.4.2017 (A-2) both qua the cadre of LDC (Stores) to the extent it places the applicants below private respondents be quashed/set aside.
- (vi) Order dated 30.9.2016 (A-13) to the extent it promotes junior respondent no.4 to the cadre of Store Keeper Grade-III be quashed and set aside.
- (vii) Mandamus be issued to the respondents to treat the seniority list dated 27.4.2016 (A-12) as final viz a viz the applicants and private respondent no.4 to 16, being rightly placed in the said seniority list in terms of circular dated 06.06.2002 (A-5) and 11.10.2002 (A-7) read with communication dated 08.5.2017 (A-15) and consequently after reverting private respondent no.4 to the cadre of LDC (S), the applicants be promoted to the next promotional cadre of Store Keeper Grade-III, on the basis of their correct placement in the seniority list dated 27.4.2016 (A-12), with all consequential benefits."

2. Facts which led to filing of this O.A. are not in dispute.

3. The applicants, who are 4 in number, initially joined respondent department between the year 1992 to 1994 after being selected through SSC against direct recruit



posts. On 19.5.1999, the office of respondents 2 and 3 issued communication for reclassification from the posts LDC (Office) to LDC (Store) as they were having independent cadre. As per that communication, employees working on the post of LDC (Office) would switch over to the post of LDC (Stores) or vice-versa and as such employees were to opt for reclassification. Another letter dated 23.11.2000 (Annexure A-4) addressed to Depot Managers was issued, in continuation to earlier letter, notifying that against 32 available vacancies of LDC (S) 49 applications were pending and classifications were subject to clearance of departmental examination. Applicants applied for the same and figured in the list at serial no.17, 22, 32 and 41 respectively. They appeared in the departmental examination and cleared the same and vide letter dated 27.9.2002, their option was accepted and they were allowed to be reclassified from LDC (O) to LDC (S). Subsequent to that, respondents also issued clarification on 11.10.2002 (Annexure A-7) clarifying that once they exercise option for reclassification, then they will not be allowed to change the same and who so ever applied subsequent to persons initially asking for option will be placed en-block junior. It is brought on record that



subsequently private respondents who applied for re-classification as LDC (S) appeared in examination in the year 2004 and were reclassified as such vide order 19.10.2004 and some of them in 2011. Respondents have issued seniority list between 2003 to 2016 in which applicants were shown senior to private respondents. Few such seniority list dated 1.1.2008, 2009, 2011, 2012, 1.1.2013 are appended as (Annexure A-9). Some of the private respondents approached Allahabad Bench of the Tribunal by filing O.A. No.330/300/2016 praying for issuance of direction to the respondents to decide their representation which was disposed of vide order dated 4.3.2016 (Annexure A-11) by directing respondents to decide indicated representation. In pursuance thereto, respondents have passed impugned order Annexure A-1/1, whereby while accepting plea of private respondents, they have been granted seniority from the date when the official respondents initially joined as LDC (O) and consequent to that the official respondents have changed seniority list vide order dated 09.10.2017 by placing the private respondents over and above the applicants. Subsequently, they also recast seniority of LDC (S) and persons junior to



the applicants were made en-block senior to applicants.

Hence the present O.A.

4. In support of their claim, applicants have taken various grounds. Firstly that the impugned order making private respondents senior to them is in violation of principles of natural justice as while deciding representation of private respondents, as per direction of Allahabad Bench of the Tribunal, respondents have made them senior without putting the applicants or other similarly placed persons on notice, thus, prejudice has been caused to them as private respondents have been made senior. It has been submitted that seniority has been changed after more than 15 years belatedly, thus, it is prayed that impugned order be quashed.
5. In support of the his plea, learned counsel for the applicants vehemently argued that direction by Allahabad Bench of the Tribunal was only to decide representation as per law but favouring the private respondents, impugned order has been passed, which is contrary to instructions issued by respondents themselves, while reclassifying the posts. As per those instructions, persons who apply and pass test earlier will be ranked senior to those who pass test subsequently. Since applicants were reclassified in the



year 2002, they have rightly been shown senior to private respondents, who have passed test later than the applicants. Thus, applicants have arbitrarily been shown junior by recasting seniority list of LDC (O) and subsequently seniority list of 15 years have been washed away by a single order which is not permissible. He placed reliance on order dated 24.12.2019 passed by this Court in the case of **Dr. Arun K. Jain vs. UOI & Ors.** (O.A. No.60/412/2019), where this Court has negated the view of the respondent by altering seniority after 20 years, holding that settled position cannot be altered after lapse of considerable time.

6. Respondents have resisted the claim of the applicants by filing written statement and have submitted that in terms of direction of Allahabad Bench, matter was re-examined and a conscious decision has been taken by the Competent Authority on 9.10.2017 that seniority will be given from the initial date of appointment in the respondent department and not from date of passing of examination. Sh. Sanjay Goyal, learned counsel for the respondents submitted that since a uniform decision has been taken to grant benefit to the entire cadre, therefore, this petition be dismissed.
7. We have given our thoughtful consideration to the matter.



8. Two questions arise for consideration of this Court whether a well settled seniority, which held field for nearly two decades, can be unsettled and whether seniority can be changed without putting affected persons to notice or not.
9. It is not in dispute that no adverse order prejudicial to the right of any affected person can be passed without hearing him/her. Applicants have a prior right, after they were reclassified in 2002, to hold the post and seniority. By stroke of a pen, while deciding representation of the private respondents, official respondents have changed their earlier stand to fix seniority from date of reclassification and after passing departmental test as LDC (S). While passing impugned order, the right of the person for promotion from 2002 till 2013-2016, has been taken away. Thus, the answer to the poser is in negative that no order prejudicial to the right of an employee can be passed without hearing hence the impugned order cannot sustain.
10. The second question whether respondents can unsettle a settled seniority list after such considerable delay or not stands settled in negative. This has so been held in the case of **Dr. Arun K. Jain** (supra), relevant paras of which read as under:-

"16. The plea taken by the learned counsel for the respondents that there was an error which took place at the time of appointment as despite respondent no.4 being more meritorious



than applicant at the time of initial recruitment, yet he was placed below due to younger in age, and as such they were within their power and authority to correct an error, in view of law laid down in the case of **SUNDER LAL V. STATE OF PUNJAB**, 1970 (1) ILR (Punjab), is without any merit, as settled things cannot be unsettled after a long delay, more so when such delay has created right in favour of a third party. In that case, the bonafide mistake had taken place which was sought to be corrected and court upheld the action of authorities. That decision is based on different set of facts and law and has no application to the facts of this case. This issue is no longer res-integra and stands settled in a number of cases.

17. In the case of **STATE OF MADHYA PRADESH & ANR. V. BHAILAL BHAI ETC.** etc., AIR 1964 SC 1006, it has been observed that the maximum period fixed by the Legislature as the time within which the relief by a suit in a Civil Court must be brought, may ordinarily be taken to be a reasonable standard by which delay in seeking the remedy under Article 226 of the Constitution can be measured. The Court observed as under:-

"We must administer justice in accordance with law and principle of equity, justice and good conscience. It would be **unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set-aside after the lapse of a number of years**..... The petitioners have not furnished any valid explanation whatever for the inordinate delay on their part in approaching the Court with the challenge against the seniority principles laid down in the Government Resolution of 1968... We would accordingly hold that the challenge raised by the petitioners against the seniority principles laid down in the Government Resolution of March 2, 1968 ought to have been rejected by the High Court on the ground of delay and laches and the writ petition, in so far as it related to the prayer for quashing the said Government resolution, should have been dismissed." (Emphasis supplied)

18. The Constitution Bench of Hon'ble Apex Court in **R.N. BOSE V. UNION OF INDIA & ORS.** AIR 1970 SC 470, has held that "It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be defeated after the number of years." In the case of **MALCOM LAWRENCE CECIL D'SOUZA VS. UNION OF INDIA AND ORS.** (1976) 1 SCC 599, it was held that if anyone feels aggrieved by an administrative decision affecting one's seniority, the said government employee should act with due diligence and promptitude and not sleep over the matter. Raking up old settled claims after a long time in questioning seniority etc. is likely to cause administrative complications and difficulties. This would be contrary to the interest of smoothness and efficiency of service. The quietus should not be disturbed and shattered after a lapse of time. Similarly, in **R.S. MAKASHI V. I.M. MENON & ORS.** AIR 1982 SC 101, the Apex Court considered all aspects of limitation, delay and laches in filing the writ petition in respect of inter se seniority of the employees. In **DAYARAM ASANAND V. STATE OF MAHARASHTRA & ORS.** AIR 1984 SC 850, while re-



iterating the similar view the Court held that in absence of satisfactory explanation for inordinate delay of 8-9 years in questioning under Article 226 of the Constitution, the validity of the seniority and promotion assigned to other employee could not be entertained.

19. The issue of challenging the seniority list, after delay, was again considered in the case of **K.R. MUDGAL & ORS. V. R.P. SINGH & ORS.** AIR 1986 SC 2086 and it was held as under :-

"A government servant who is appointed to any post ordinarily should at least after a period of 3-4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity..... Satisfactory service conditions postulate that there shall be no sense of uncertainty amongst the Government servants created by writ petitions filed after several years as in this case. It is essential that anyone who feels aggrieved by the seniority assigned to him, should approach the Court as early as possible otherwise in addition to creation of sense of insecurity in the mind of Government servants, there shall also be administrative complication and difficulties.... In these circumstances we consider that the High Court was wrong in rejecting the preliminary objection raised on behalf of the respondents to the writ petition on the ground of laches."

In the case of **B.S. BAJWA V. STATE OF PUNJAB & ORS.** AIR 1999 SC 1510, the Court has clearly held that in service matters, the question of seniority should not be re-opened after the lapse of reasonable period because that results in disturbing the settled position which is not justifiable. In that case, there was inordinate delay for making a grievance and that alone was sufficient to decline interference under Article 226 and to reject the writ petition.

20. It is thus apparent that the principle of sit-back theory has been followed by courts of law to ensure that the settled things are not unsettled after delay and if a right has accrued in favour of a party, then he has a reasonable belief that the same would not be taken back from him as in this case the first seniority list was issued in 2001 and upto 2018 (Annexure A-9), the applicant was shown as senior to respondent no.4. He has been shown as senior to respondent no.4 on each post starting from the post of Assistant Professor to the post of Professor for a long period of more than two decades and as such settled things cannot be unsettled by the official respondents even if there be an administrative error, as explained by them. More so, when respondent no.4 himself sit back and chose not to challenge the seniority lists issued from time to time and never filed a case in a court of law seeking the benefit. In seniority list as on 31.1.2018 (Annexure A-9), it is clearly stated that objections/ representations received from the Professors till date have been examined and became null and void. In reminder dated 28.3.2018, respondent no. 4 claimed that his seniority be restored with reference to his initial selection. It appears that upon the decision of this Tribunal in the case of Prof. Arunanshu Behera (supra), delivered on 28.3.2018, Respondent No.4 laid his claim for restoration of seniority, on same date. No doubt, in that case the objection of limitation taken by respondents was brushed aside by the Tribunal and direction was issued to re-



cast the seniority list, but in judicial review (CWPs), the Hon'ble High Court upset the view of this Tribunal and settled the issue holding that the Tribunal could not have entertained the petition being barred by limitation, delay and laches. The observations made by Hon'ble High Court in **CWP No.11433 of 2018 and 10203 of 2018** are as under :-

"Apart from justifying their action of granting retrospective seniority to respondents No. 3 and 4 on merits, the petitioner and respondents No. 3 and 4 sought the dismissal of the Original Application on the ground that it was barred by limitation and delay and laches. It was also pleaded that respondent No. 1 was estopped from claiming the relief

sought.

The learned Tribunal rejected the objection to the maintainability of the OA on the ground of delay and laches by holding that the PGI had only circulated the provisional seniority list vide letter dated 17.8.2006 inviting objections from the aggrieved persons. The final seniority list had not been prepared. It was further held that the representation of respondent No.1 raising important legal issues with regard to the seniority of respondent Nos.3 and 4 had been rejected by the petitioner Institute by a non-speaking order dated 4.1.2017 which was illegal. The Original Application was held to be within limitation. On merits the learned Tribunal then relied on Regulation 34 of the PGIMER Regulations, 1967, which are as under:

"34. Seniority:- Seniority of employees of the Institute in each category shall be determined by the order of merit in which they were selected for appointment to the grade in question, those selected on earlier occasion being ranked senior to those selected later:

Provided that the seniority interse of employees, other than the teaching staff of Institute shall be determined by the length of continuous service on a post in a particular service:

Provided further that in the case of members, recruited by direct appointment, the order of merit determined by the Commission or the Selection Body shall not be disturbed in fixing the seniority.

Provided further that in case of two members appointed on the same date, their seniority shall be determined as follows-

(a) member recruited by direct appointment shall be senior to a member recruited otherwise:-

(b) a member appointed by promotion shall be senior to a member appointed by transfer:

(c) in the case of members appointed by promotion or other transfer seniority shall be determined according to the seniority of such members in the appointments from which they were promoted or transferred; and



(d) in case of members appointed by transfer from different cadres, their seniority shall be determined according to pay, preference being given to a member who was drawing a higher rate of pay in his previous appointment and if the rates of pay drawn are also the same, then by their length of service in those appointments and if the length of such service is also the same an older member shall be senior to a younger member.

Note: 1 This rule shall not apply to members appointed on purely provisional basis pending their passing the qualifying test.

Note:2 In the case of members whose period of probation is extended the date of appointment for the purpose of these rules shall be deemed to have been deferred to the extent the period of probation is extended."

It was held that in terms of the proviso to this regulation a member recruited by direct appointment shall be senior to a member recruited

otherwise. As respondent No.1 was directly appointed and respondents No.3 and 4 were promoted under the APS Scheme he would rank senior to them. It was also held that there is no provision in the APS Scheme for grant of retrospective promotion. Accordingly, the Original Application was allowed.

We have heard learned counsel for the parties and perused the record.

We are of the view that in the facts and circumstances of the case, the Tribunal was not justified in entertaining the petition and the same was liable to be dismissed on the ground of limitation and delay and laches. Further respondent No.1 was estopped from challenging the grant of retrospective seniority to respondents No.3 and 4 with effect from the date of their eligibility under the APS Scheme being himself a beneficiary of retrospective promotion under that Scheme at an earlier stage in his service career.

After the approval of the recommendations of the Selection Committee under the APS Scheme by the Governing Body of the Institute in its meeting held on 20.12.2005 respondents No.3 and 4 were promoted as Professors w.e.f. 1.7.2002 vide office orders dated 21.12.2005. Thereafter, a provisional seniority list dated 17.8.2006 was circulated which reflected their date of appointment as 1.7.2002. Respondent No.1 in his representation dated 16.7.2007 raised a grievance regarding the seniority assigned to Professors figuring at Sr.Nos.60, 66 and 67, whose appointment was by direct recruitment on the ground that they had joined at a later date. No grievance was raised regarding the seniority of respondents No.3 and 4. It was on 19.8.2016 that for the first time he raised a grievance regarding the grant of retrospective promotion to respondents No.3 and 4 and assigning them seniority on that basis. This was about eleven years after their promotion on 21.12.2005 w.e.f., 1.7.2002. It was clearly barred by limitation. It is well settled that disputes relating to seniority cannot be permitted to be raised at a belated stage.

In ***P.S. Sadasivaswamy v. State of T.N., (1975) 1 SCC 152*** Hon'ble Supreme Court observed:



"2..... A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal."

Similarly, in **B.S. Bajwa v. State of Punjab, (1998) 2 SCC 523** it was held as under:

"7. Having heard both sides we are satisfied that the writ petition was wrongly entertained and allowed by the Single Judge and, therefore, the judgments of the Single Judge and the Division Bench have both to be set aside. The undisputed facts appearing from the record are alone sufficient to dismiss the writ petition on the ground of laches because the grievance was made by B.S. Bajwa and B.D. Gupta only in 1984 which was long after they had entered the department in 1971-72. During this entire period of more than a decade they were all along treated as junior to the other aforesaid persons and the rights inter se had crystallised which ought not to have been reopened after the lapse of such a long period. At every stage others were promoted before B.S. Bajwa and B.D. Gupta and this position was known to B.S. Bajwa and B.D. Gupta right from the beginning as found by the Division Bench itself. It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition."

The ratio of the above decisions is clearly applicable in this case. It has come on record that respondent No.1 was promoted under the APS Scheme as Associate Professor on 29.9.2000 with retrospective effect from 1.7.1999 and then again on the post of Additional Professor (General Surgery) with retrospective effect from 1.7.2003. Being a beneficiary of retrospective promotion under this Scheme he is stopped from challenging the grant of similar benefit to others.

Thus, we are of the view that the Ld. Tribunal has wrongly entertained the OA which was liable to have been dismissed on the grounds of limitation, delay and laches as also estoppel. Consequently, there was no occasion for the Tribunal to adjudicate



on the case on merits. Accordingly, these writ petitions are allowed. The order of The order of

the Tribunal is set aside.

As these petitions have been allowed on preliminary grounds, we make it clear that we have not expressed any opinion on the merits of the other contentious issues decided by the Tribunal."

21. The respondent PGIMER itself had opposed the claim of Prof. Arunanshu Behera (supra) in this Tribunal on the ground that his claim was barred by the law of limitation but that plea did not find favour with this Tribunal. However, such plea was accepted in judicial review by the Hon'ble High Court and claim was rejected being barred by law of limitation. In one case, in similar circumstances, the respondent PGIMER says that same is barred by limitation and in another case it revives a belated claim, without any logic or reason and ignoring the settled sit-back principle.

22. In this case, admittedly the seniority lists were issued from time to time starting from 2001, on the basis of promotions have also taken place, but those events were allowed to be settled by the respondent no.4 as he never challenged those things at relevant point of time and once a right has been created in applicant of being senior than respondent no.4, then he (respondent no.4) cannot be allowed to turn around after two decades and claim that he was senior to applicant at the time of initial appointment. Such a claim, to say the least, would be barred by the principle of estoppel.

23. Before parting we would like to deal with the law cited on behalf of the respondents. Reliance was placed on decision of Hon'ble Jurisdictional High Court in the case of **MRS. ASHA RANI LAMBA V S. STATE OF HARYANA**, 1983 (1) SLR, 400 to argue that once a person is promoted from retrospective date, he or she becomes entitled to arrears of pay as the same would not be barred by limitation. Reliance is also placed upon **MADRAS PORT TRUST V. HYMANSHU INTERNATIONAL**, 1979 AIR (SC) 1144 to claim that plea of limitation should not ordinarily be taken by Government or Public Authority. Apparently, both these decisions do not help the respondents, from any angle, at all. They then referred to a decision of Hon'ble Punjab and Haryana High Court in **RAJ KUMAR BATRA VS. STATE OF HARYANA**, 1992(1) SCT 129, in which it was held that Government can undo a wrong any time and delay can be a bar in granting relief by court but not when a mistake is corrected by Government itself. This decision would be of no help to the respondents in view of observations made by Division Bench of Hon'ble Jurisdictional High Court in the case of Prof. Arunanshu Behera (supra). This issue is also no longer-res integra and stands settled by now, that even if administrative authorities want to carry our review and there be no limitation, even then such revision can be done within a reasonable time and not after a long lapse of time.

24. In the case of **SANTOSH KUMAR SHIVGONDA PATIL V. BALASAHEB TUKARAM SHEVALE** 2009 9 SCC 352 in para 11, the Hon'ble Supreme Court held as under :-



"11. It seems to be fairly *settled* that if a statute *does* not prescribe the *time*-limit for exercise of revisional power, it *does* not mean that such power can *be* exercised at any *time*; rather it should *be* exercised within a reasonable *time*. It is so because the *law does not expect a settled thing to be unsettled after a long lapse of time*. Where the legislature *does* not provide for any length of *time* within which the power of revision is to be exercised by the authority, suo motu or otherwise, it is plain that exercise of such power within reasonable *time* is inherent therein."

It is, thus, clear that in the name of principle that delay bars a remedy through a court of law and it does not apply to the department, the respondents cannot be allowed to unsettle settled things more so in view of the law declared in the indicated case that even if there be no limitation for revision, even then such review has to be carried out within a reasonable time and in this case the things which were settled in 2001 are sought to be unsettle in 2018, which is not permissible, at all, from any angle.

25. The Hon'ble Supreme Court in the case of **H.S.VANKANI V. STATE OF GUJARAT**, (2010) 4 SCC 301, underlined the importance of seniority and the consequences of unsettling the seniority and has held as under :-

"38. Seniority is a civil right which has an important and vital role to play in ones service career. Future promotion of a government servant depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum-seniority, etc. Seniority once settled is decisive in the upward march in ones chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instils confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of ones junior in service is unsettled, it may generate bitterness, resentment, hostility among the government servants and the enthusiasm to do quality work might be lost. Such a situation may drive the parties to approach the administration for resolution of that acrimonious and poignant situation, which may consume a lot of time and energy. The decision either way may drive the parties to litigative wilderness to the advantage of legal professionals both private and government, driving the parties to acute penury. It is well known that the salary they earn, may not match the litigation expenses and professional fees and may at times drive the parties to other sources of money-making, including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further, it also consumes a lot of judicial time from the lowest court to the highest resulting in constant bitterness among the parties at the cost of sound administration affecting public interest.

39. Courts are repeating the ratio that the seniority once settled, shall not be unsettled but the men in power often violate that ratio for extraneous reasons, which, at times calls for departmental action."

26. On a close examination of factual scenario and legal proposition and following the authoritative law of the law laid down by their Lordships that seniority once settled is decisive in the upward march in ones chosen work or calling and gives certainty



and assurance and boosts the morale to do quality work; it instills confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration, the inescapable conclusion and answer to the question raised in opening para of this order is that the tentative/provisional seniority list, which existed for over two decades and was acted upon for making further promotions for all these years, cannot be called as tentative/provisional and it cannot be, tinkered with, after such huge delay of over two decades on the touch stone of sit back principle, limitation, delay and laches, estoppel and acquiescence.

27. In the wake of aforesaid discussion, this O.A. is allowed. The impugned order dated 12.4.2019 (Annexure A-15) is quashed and set aside. Simultaneously, the official respondents are directed to restore the seniority of applicant over respondent no. 4, in seniority list dated 25.9.2018 (Annexure A-12), with all the consequential benefits, if any. The connected M.As, if any, also stand disposed of."

11. Accordingly, we quash impugned orders making private respondents senior to applicants by issuing a fresh seniority list and order promoting them on higher post is also quashed. The official respondents are directed to comply with the order by restoring earlier seniority of applicants within a period of three months from the date of receipt of a copy of this order. We may also note here that notice was issued to private respondents but they have chosen not to appear and vide order dated 16.11.2017; they were proceeded ex-parte. No costs.

(MOHD. JAMSHED)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 10.1.2020.
Place: Chandigarh.

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