RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

This is the 10th day of October 2018.

ORIGINAL APPLICATION No. 1041 of 2007

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)

HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J)

Yatish Kumar Chaturvedi aged about 49 years, S/o Late Pt. P.S Chaturvedi, Resident of 401 Kailash Tower, Sanjay Palace Agra. Presently Posted as Head Clerk Personal in the office of Divisional Railway Manager Legal Sale Agra Cantt. North Central Railway, Agra.

.....Applicant.

By Advocate: Shri V. Budhwar

VERSUS

1. Union of India through General Manager North Central Railway, Allahabad.
2. Divisional Railway Manager, Agra.
3. Senior Divisional Personal Officer, Agra.

By Advocate : Shri P. Chandra/Shri A.K. Rai

.....Respondents

ORDER

BY HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J)

1. Case of applicant Yatish Kumar Chuturvedi is that after appointment as Junior clerk in respondent-organisation on 9.1.1980, he became entitled to next promotion of Senior clerk (Group – D post) governed by Para 214 – (c) (v) & (vi) of the 'Rules Governing the Promotion of Group 'C' Staff' (hereinafter referred to as the 'Rules') which reads as below:

> "(v) A suitability test should be held at the interval which should be less than six months. All the eligible candidates as per their seniority including those who failed at the last

test should be called. The period of six months is reckoned from the date of announcement of the result.
(Board's letter No. E(NG)I-66 PM 1-98 dated 18.2.1967 & 3.12.1969.

(vi) If an employee fails in a suitability test but is called up again, a suitability test, after a time of six months and he passes the same, he should be given preference over his junior who had passed the suitability test earlier than him but is still waiting to be promoted for want of a vacancy.
(Board's letter No. E(NG) I-66 PM 1-98 dated 18.2.1967)".

2. A chronicle is given of the career chart of applicant as below:

1) Failed suitability test/scrutiny in 1983;
2) Passed the scrutiny test on 7.1.1987 held not after six months but after 3 years;
3) Assumed charge as Senior clerk on 10.01.1987;
4) Seniority list dated 10.01.1992 corrected his seniority from S. No. 363 to 323 reflecting applicant to be senior to persons No. 6 to 9;
5) Promoted as Head clerk on 31.08.1994;
6) Impugned seniority list dated 01.01.2003 altering his seniority vis-a-vis respondents but subject to case pending in Hon'ble Apex Court;
7) In list dated 01.01.2003, applicant at seniority No. 66 below Deen Dayal Sharma, Narendra Kumar Sharma, Kamal Kumar Sharma and R.B.Lavaniya mentioned at serial No. 19, 33, 36 and 39 respectively thereby altering the seniority of applicant;
8) Impugned provisional seniority lists dated 01.01.2003 and 21/24.11.2003 reflecting applicant at serial no. 11 challenged in O.A. 98 of 2005 as the same brings the applicant below respondents No. 6 to 9;
9) O.A. disposed to consider the representation of applicant against the seniority lists which was rejected

by respondents on vide impugned order dated 19.6.2007;

10) The seniority list of 10.01.1992 was final and not challenged and therefore should be the basis for making promotion etc;

11) Provisional list of 1.1.2003 and 21/24.11.2003 are provisional and not final lists since his objection is pending (Para No. 35 of the O.A.);

3. Applicant's further case is reflected as per paragraphs of the O.A mentioned below:

"37. That, in any case, assuming without admitting that in the suitability test/scrutiny held in the year, 1983 for recruitment on the post of Senior Clerk, the applicant was not declared successful and the incumbents namely, Mohd. Uma Ali, Shri Hari Sewak Rai & Sri Ram Swarup Daroogar, had cleared well and they had been successful and then in view of the express provisions contained in para 214 (c) (v) & (vi) second suitability test ought to have been taken within a period of six months without any delay whatsoever. However, the second suitability test was taken after a period of 36 months i.e. vide letter dated 2.12.1986 on 8.12.1986 result whereof was declared on 7.1.1987, whereby the applicant was declared successful, meaning thereby that in view of the para 214 (c) (vi), the applicant is to be granted seniority and place in a position from the date the juniors have been granted the said benefit.

38. That due to non-holding of suitability test within a period of six months as mentioned hereinabove, the applicant's promotional prospects and his seniority benefits have been kept in jeopardy as due to the same the applicant's entire service career has been sidetracked and the juniors have been allowed to steal march over the applicant for which they are not entitled, in any manner, whatsoever.

39. That though the applicant has been granted promotion on the post of Head Clerk on 31.8.1994 and in the seniority list of the Head Clerk has been granted the seniority position at Serial No. 66 from the date he had been granted promotion, but in case, suitability test was taken earlier and the seniority was given at the right position as demonstrated above, the applicant would have been seniority to all the aforesaid persons.

40. That para 228 of the Indian Railway Establishment Manual Volume (I) (Revised Edition 1989) clearly provides as under:-

"228. Erroneous Promotions – (i) Sometimes due to administration efforts, staff are over-looked for promotion to higher grades could either be on account of wrong assignment of relative seniority of the eligible staff or full facts not being placed before the competent authority at the time of ordering promotion or some other reasons. Broadly, loss of seniority due to the administrative efforts can be of two types-

(i) Where a person has not been promoted at all because of administrative efforts, and

(ii) Where a person has been promoted but not on the date from which he would have been promoted but for the administrative efforts.

Each such case should be dealt with on its merits. The staff who have lost promotion on account of administrative efforts should on promotion be assigned correct seniority vis-a- vis their juniors already promoted, irrespective of the date of promotion, pay in the higher grade on promotion may be fixed proforma at the proper time. The enhanced pay may be allowed from the date of actual promotion. No arrear on this account shall be payable as he did not actually shoulder the duties and responsibilities of the higher posts".

42. That even otherwise, the Indian Railway Establishment Manual Volume (I) (Revised Edition 1989) also provides for relaxation or modification of rules as in this regard para 114 is being quoted herein under:-

> "114. Power to relax or modify rules:- The General Manager or the Chief Administrative Officer, may in special circumstances and for reasons to be recorded in writing, relax or modify these rules in specific individual cases. They can also issue orders for deviations from these rules in respect of certain categories or on certain occasions provided such relaxations are purely on a temporary basis. Railway Board's prior approval is however, required to long term or permanent alteration of the Rules.

The power should be exercised by the General Manager or his Chief Personnel Officer, or the Chief Administrative Officer personally; but it shall not be otherwise redelegated".

43. That a bare perusal of para 114, as referred to above, will clearly reveal that the General Manager or the Chief Administrative Officer may in special circumstances and for reasons to be recorded in writing, relax or modify these rules in specific individual cases, meaning thereby that where undue hardship, injustice is being meted to a particular incumbent, then the rules can be modified or relaxed. In the present case, admittedly there is a clearing illegality and injustice purported by the respondents on account of which the applicant's entire service career is being kept in jeopardy".

4. So, the applicant seeks the relief of quashing the order dated 19.6.2007 (Annexure 1) whereby his representation was rejected and implementation of seniority list dated 10.1.1992.

5. In the counter affidavit, the respondents have taken the plea that in the seniority list dated 10.1.1992, the seniority of applicant was erroneously fixed at two places i.e. at Sl. No. 323 and 363 and was subsequently corrected by deleting his seniority at Serial No. 323 and fixing the seniority of applicant at Serial No. 363, which list attained finality after one year. The list of 1992 was not challenged by the applicant but when he was promoted as Head Clerk and the seniority list of Head Clerk was published and based on his seniority in the list of Senior Clerk, applicant was shown at Sl. No. 363. Accordingly, Sri Deen Dayal Sharma, Narendra Kumar Sharma, Kamal Kumar Sharma and P.B. Lavania, all Head Clerks are affected parties and if the relief is granted, then these persons would be ranked junior to the applicant but these persons have not been arrayed as respondents and, therefore, the O.A. is not maintainable for non-joinder of necessary parties, though in the previous O.A. No. 98 of 2005 applicant had impleaded them as respondents.

6. In the counter affidavit filed by respondent No. 3, it has been averred that applicant had failed in the suitability test for the post of Senior Clerks held on 25.11.1983 and thereafter failed to appear for the suitability test held on 22.7.1984, 26.09.1984, 31.07.1985, 26.8.1985 and 13.9.1986 and subsequently he appeared at the suitability test held on 18.12.1986 in which he was declared passed. Accordingly, the applicant was promoted and posted as Senior Clerk w.e.f. 10.1.1987. Hence, seniority of applicant as Senior Clerk w.e.f. 18.2.1987 and as Head Clerk w.e.f. 14.7.1994 was fixed. However, applicant is aggrieved and seeks seniority over the junior Clerks who were below him in seniority but had passed the suitability test in the first attempt and promoted as Senior Clerk earlier then the applicant. Therefore, the applicant after a lapse of 25 years seeks to agitate the matter of his seniority. Anyhow, applicant appeared in the suitability test held on 8.12.1986 and passed the same and consequently accepted the promotions of the post of Senior Clerk on 10.1.1987 and Head Clerk on 14.9.1994

without raising any objection. The seniority list of 1992 contained the name of applicant at S. No. 323 and S. No. 363 and was corrected as being Sr. No. 363 and was communicated to the applicant. Respondent No. 3 has relied upon para 319 of the I.R.E.M and averred that Railway servant after being found suitable promoted in his term would be considered as Senior in that grade to all others who are subsequently promoted after being found suitable. Person at Serial No. 6 to 9 were promoted earlier then the applicant and accordingly, as per, para 319 of the I.R.E.M they were assigned seniority over the applicant.

7. It would be pertinent to note that no rejoinder has been filed by the applicant. We have heard and considered the arguments of learned counsels for the parties and perused the pleadings on record as well as the written arguments filed by the parties. In the written arguments filed by the parties, they have reiterated the pleas taken by them in their pleadings.

8. For the reasons given below, the O.A. is to be dismissed on the following grounds:

A. Delay in seeking the relief;
B. Non-joinder of necessary parties;
C. On merit of the case.

Delay in seeking the relief

9. Applicant seeks the relief that the seniority list of 1992 be kept intact and he be given the seniority over the persons named in the present O.A which has been filed in the year 2007 and consequential fallout, if the list of 1992 is maintained on the list of 01.01.2003 and 21/24.11.2003 reflecting applicant at serial no. 11 challenged in O.A. 98 of 2005 would be that the applicant become senior to the persons named in the O.A.

10. In so far as question of limitation is concerned, Section 21 of the Central Administrative Tribunal Act, 1985 reads as under:-

"(1) A Tribunal shall not admit an application,—

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where—

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or subsection (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that they had sufficient cause for not making the application within such period".

11. A reading of the said section would indicate that sub-section (1) of Section 21 provides for limitation for redressal of the grievances in clauses (a) and (b) and specifies the period of one year. Sub-section (2) amplifies the limitation of one year in respect of grievances covered under clauses (a) and (b) and an outer limit of six months in respect of grievances covered by sub-section (2) is provided. Sub-section (3) postulates that notwithstanding anything contained in sub-section (1) or sub-section (2), if the applicants satisfy the Tribunal that they had sufficient cause for not making the applications within such period enumerated in sub-sections (1) and (2) from the date of application, the Tribunal has been given power to condone the delay, on satisfying itself that the applicants have satisfactorily explained the delay in filing the applications for redressal of their grievances. When subsection (2) has given power (sic right) for making applications within one year of the grievances covered under clauses (a) and (b) of subsection (1) and within the outer limit of six months in respect of the grievances covered under sub-section (2), there is no need for the applicant to give any explanation to the delay having occurred during that period. They are entitled, as a matter of right, to invoke the jurisdiction of the court for redressal of their grievances. If the applications come to be filed beyond that period, then the need to give satisfactory explanation for the delay caused till date of filing of the application must be given and then the question of satisfaction of the Tribunal in that behalf would arise. Sub-section (3) starts with a non obstante clause which rubs out the effect of sub-section (2) of Section 21 and the need thereby arises to give satisfactory explanation for the delay which occasioned after the expiry of the period prescribed in sub-sections (1) and (2) thereof. Since Section 21 (1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is

shown for not doing so within the prescribed period and an order is passed under Section 21 (3).

12. On the question of limitation and delay in filing the action in court/tribunal it has been held by Hon'ble Apex Court in:

1) State Of Uttaranchal & Anr vs Shiv Charan Singh Bhandari & Ors decided on 23 August, 2013 that :"We have no trace of doubt that the respondents could have challenged the ad hoc promotion conferred on the junior employee at the relevant time. They chose not to do so for six years and the junior employee held the promotional post for six years till regular promotion took place. The submission of the learned counsel for the respondents is that they had given representations at the relevant time but the same fell in deaf ears. It is interesting to note that when the regular selection took place, they accepted the position solely because the seniority was maintained and, thereafter, they knocked at the doors of the tribunal only in 2003. It is clear as noon day that the cause of action had arisen for assailing the order when the junior employee was promoted on ad hoc basis on 15.11.1983. In C. Jacob v. Director of Geology and Mining and another[1], a two-Judge Bench was dealing with the concept of representations and the directions issued by the court or tribunal to consider the representations and the challenge to the said rejection thereafter. In that context, the court has expressed thus: -

"Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that

the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim."

The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

15. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action.

16. In State of Orissa v. Pyarimohan Samantaray[4] it has been opined that making of repeated representations is not a satisfactory explanation of delay. The said principle was reiterated in State of Orissa v. Arun Kumar Patnaik[5].

The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time. In Karnataka Power Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan and another[3], the Court took note of the factual position and laid down that when nearly for two decades the respondent-workmen therein had

remained silent mere making of representations could not justify a belated approach."

2) In State of M.P. and others etc. etc. v. Nandlal Jaiswal, AIR 1987 SC 251 the Court observed that: "it is well settled that power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction."

3) In Chennai Metropolitan Water Supply and Sewarage Board and Others Vs. T.T. Murali Babu (2014) 4 SCC 108, it was held by the Hon'ble Apex Court as under:-

"13. First, we shall deal with the facet of delay. In Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati and others[AIR 1969 SC 329] the Court referred to the principle that has been stated by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd, Abram Farewall, and John Kemp[(1874) 5 PC 221], which is as follows:-

"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would

be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

4. In State of Maharashtra v. Digambar[(1995) 4 SCC 683], while dealing with exercise of power of the High Court under Article 226 of the Constitution, the Hon'ble Apex Court observed that power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct.

5. Union of India & Others Vs. M.K. Sarkar (2010) 2 SCC 58, the Hon'ble Apex Court held as under:- "When a belated representation in regard to a `stale' or `dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of action for reviving the `dead' issue or time barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause

of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches".

6. C. Jacob vs. Director of Geology and Mining, (2008) 10 SC 115 that:- "The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any `decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to `consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

10. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to

inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

11. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of 'acknowledgment of a jural relationship' to give rise to a fresh cause of action."

13. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law

does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

14. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. It be repeated at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons - who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.

15. It is settled law that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21 (1) or Section 21 (2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21 (1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation.

16. In the present case, the applicant on his own showing is seeking relief pertaining to the year 1992 or at the most 2003. Therefore the cause of action occurred to the applicant in the year 1992 or 2003. Applicant has not given any reason, let alone a plausible reason to explain the delay in filing the present O.A. from 1992/2003 regarding the seniority list of 1992 but chosen to say that he was filing representations. The approach of the applicant from the beginning has been lackadaisical and indolent which is responsible for the inordinate delay in approaching this Tribunal. Delay and laches, on part of the

applicant to seek remedy is written large on the face of record. To repeat the observations of Hon'ble Apex Court - In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition.

17. The applicant has not adduced sufficient cause that prevented him from filing the Application within the prescribed period of limitation. In a recent decision in SLP (C) No.7956/2011 (CC No.3709/2011) in the matter of D.C.S. Negi vs. Union of India & Others, decided on 07.03.2011, it has been held as follows:- "A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21 (1) or Section 21 (2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21 (1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21 (3)".

18. In the light of the aforesaid observation of the Hon'ble Supreme Court, the law down in a catena of judgments is that an aggrieved party has to approach the court within the statutory period prescribed and after the expiry of that period, the Court cannot grant the relief prayed for. Hence, in our view, the applicant does not deserve any indulgence in entertaining the OA. It is a stale and dead claim and cannot be entertained at this long lapse of time. The present O.A. is hopelessly barred by period of limitation.

Non-joinder of necessary parties

19. If one looks to the pleading of the applicant, he is aggrieved of his supersession in promotion by two set of persons named in the O.A. However, if the relief is granted to the applicant, the aforementioned persons would be effected adversely, in so far as, their seniority is concerned but they have not been made party to the present O.A. The contention of respondents in their counter affidavits is clear that the effected persons have not been made party-respondents which is fatal to the application.

20. On the non-joinder of necessary party and its effect on the litigation, reference may be made to :

(1) Indu Shekhar Singh and others v. State of U.P., (2006) 8 SCC 129 wherein it was held that "There is another aspect of the matter. The appellants herein were not joined as parties in the writ petition filed by the respondents. In their absence, the High Court could not have determined the question of inter se seniority."

(2) Km. Rashmi Mishra v. M.P. Public Service Commission and others3, after referring to Prabodh Verma (supra) and Indu Shekhar Singh (supra), the Court took note of the fact that when no steps had been taken in terms of Order 1 Rule 8 of the Code of Civil Procedure or the principles analogous thereto all the seventeen selected candidates were necessary parties in the writ petition. It was further observed that the number of selected candidates was not many and there was no difficulty for the appellant to implead them as parties in the proceeding. Ultimately, the Court held that when all the selected candidates were not impleaded as parties to the writ petition, no relief could be granted to the appellant therein.

(3) In Public Service Commission, Uttaranchal v. Mamta Bisht and others, (2010) 12 SCC 204, Hon'ble Apex Court, while dealing with the concept of necessary parties and the effect of non impledment of such a party in the matter

when the selection process is assailed, observed thus: "....in Udit Narain Singh Malpaharia v. Board of Revenue, wherein the Court has explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called 'Code of Civil Procedure') provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of Code of Civil Procedure are not applicable in writ jurisdiction by virtue of the provision of Section 141 Code of Civil Procedure but the principles enshrined therein are applicable. (Vide Gulabchand Chhotalal Parikh v. State of Gujarat, Babubhai Muljibhai Patel v. Nandlal Khodidas Barot and Sarguja Transport Service v. STAT)"

(4) In Vijay Kumar Kaul and Ors. v. Union of India and Ors., (2012) 7 SCC 610 it has been ruled thus: "Another aspect needs to be highlighted. Neither before the Tribunal nor before the High Court, Parveen Kumar and others were arrayed as parties. There is no dispute over the factum that they are senior to the Appellants and have been conferred the benefit of promotion to the higher posts. In their absence, if any direction is issued for fixation of seniority, that is likely to jeopardise their interest. When they have not been impleaded as parties such a relief is difficult to grant."

(5) State of Rajasthan v. Ucchab Lal Chhanwal, (2014) 1 SCC 144, it has been opined that: "Despite the indefatigable effort, we are not persuaded to accept the aforesaid preponement, for once the Respondents are promoted, the juniors who have been promoted earlier would become juniors in the promotional cadre, and they being not arrayed as parties in the lis, an adverse order cannot

be passed against them as that would go against the basic tenet of the principles of natural justice."

(6) Ranjan Kumar v/s State of Bihar & Ors., (2015) 2 SCC (L&S) 532, wherein most of the appellants herein were not impleaded as respondents before the High Court and without taking note of the said aspect the High Court has invalidated the selection and nullified their appointments which was held to be violative of the principles of natural justice and it was observed by the Hon'ble Apex Court that "In view of the aforesaid enunciation of law, we are disposed to think that in such a case when all the appointees were not impleaded, the writ petition was defective and hence, no relief could have been granted to the writ petitioners."

21. In the instant case, the persons named in the O.A. who have been shown to be senior to the applicant will be surely interested in protecting and defending the seniority list. Therefore, they are interested persons to be impleaded in the writ petition while challenging the seniority list, which has not been done by the applicant, despite it being mentioned in the counter affidavit. Therefore on the ground of non-impleadment of necessary parties, the O.A. is bound to fail.

<u>On merit</u>

22. Applicant's case is that in the seniority list dated 10.01.1992, he was at Serial No. 323 and was therefore, senior to the persons mentioned in the O.A. but thereafter in the seniority list issued in the year 2003, he has been shown at Sl. No. 66 which is junior to the persons named in the OA. In this regard, the respondents in their counter affidavits to which no rejoinder has been filed by the applicant, the plea of respondents is that in the seniority list of 1992, the name of applicant figured erroneously at Sl. No. 363 and Sl. No. 323 which was corrected to Sl. No. 363 and which was communicated to the applicant. At the risk of repetition, it may be mentioned that no rejoinder has been filed by the applicant to contradict the stand of the respondents.

24. Respondents in their counter affidavits have controverted the plea of applicant that after the suitability test held in 1983, the next suitability test was held after 3 years in 1986 by averring that suitability tests were held in 1984, 1985 and 1986 in which despite calling the applicant, the applicant did not appear in the suitability test and it was only in suitability test held on 8.12.1986 that applicant appeared and was declared successful and promoted w.e.f. 10.1.1987 whereas the other persons who had taken the suitability test in 1983 were successful and, therefore, promoted earlier to the applicant and accordingly they were senior to the applicant whose promotion took place in the year 1987. On this aspect of the case, since no rejoinder has been filed by the applicant, the stand of the respondents is to be accepted that the persons named in the O.A. were senior to the applicant.

25. Reference may be made to the citations filed by the applicant. Smt. S.K.Chaudhari v/s Manager, Committee of Management, (1991) 1 UPLBEC 250 wherein it has been observed that court would not interfere with seniority fixed 15 years ago. Ramchandra v/s Shanker, AIR 1974 SC 259 deals with delay in filing the case and alternative remedy.

26. For the reasons mentioned above, we are of the opinion that the O.A. is meritless and accordingly dismissed. No order as to costs.

(Rakesh Sagar Jain) **(Gokul Chandra Pati)**

Member (J) Member (A)

Manish/-