14

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 209 of 2012
Cuttack, this the 24th day of March, 2015

Tapi Patel ..... Applicant

Versus

Union of India & Ors. ..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? No
2. Whether it be referred to PB for circulation? No

(R.C.MISRA)
Member (Admn.)

(A.K.PATNAIK)
Member (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 209 of 2012

Cuttack, this the 24th day of March, 2015

CORAM

HON'BLE MR. A.K. PATNAIK, MEMBER (J)
HON'BLE MR. R.C. MISRA, MEMBER (A)

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Tapi Patel, aged about 35 years,
S/o Sri Sadhu Patel
Presently working as DBW/HS-II,
Unit No. 4, Personal No. 7077,
Ordnance Factory, At/PO- Badmal,
Dist-Bolangir. Applicant

(Advocates: M/s. S.K.Ojha, S.K.Nayak.)

Versus

Union of India Represented through

1. Secretary to Govt. of India,
   Ministry of Defence (Production Unit),
   Defence Head Quarters, New Delhi-110011.

2. General Manager,
   Ordnance Factory, At/PO- Badmal,
   Dist-Bolangir-767770.

3. Sri Rajendra Ray
   Personal No. 6962,
   Presently working as DBW/HS-I,
   Ordnance Factory, Badmal, Dist-Bolangir. Respondents

(Advocate: Mr.S. Barik , ACGSC)

ORDER

A.K.PATNAIK, MEMBER (JUDL.)

The applicant is a Group D employee, presently posted as Danger Building Worker, Highly Skilled, in short 'DBW/HS-II' under the General Manager, Ordnance Factory, At/Po.Badmal, Dist. Bolangir/Odisha (Respondent No.2). He has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 as against the Seniority List of Industrial Employees, working under the Respondent No.2, as on

01.01.2012 showing his name at Sl.No.263 in the said list with prayer to direct the Respondent Nos. 1 & 2 to assign and place him in the appropriate position at par with Respondent No.3 modifying the seniority list dated 01.01.2012 (Annexure-A/13) and to direct the Respondent No.2 to extend the consequential benefit after modification of the seniority position *inter alia* stating that on being sponsored from Employment Exchange, he was called upon to participate in the selection meant for Industrial Employees such as DBW/SS in the pay scale of Rs. 2650-4000/-. Though as many as 172 persons including him were selected, all of them were not allowed to join because of filing of Writ Petition OJC No. 15454 of 1997 by some of the unsuccessful candidates before the Hon'ble High Court of Orissa. The said case was dismissed on 11.08.1998 after which the selected candidates were allowed to join their duty and applicant joined his post on 14.09.1998. However, Respondents published the seniority list on 24.09.2002 correctly showing the names of the selected candidates, as per the merit position of the select list. The promotional post is DBW / Skilled. As per the Recruitment Rules, 1989, an employee must have completed two years of service in the grade of DBW / SS for promotion to DBW / Skilled after passing the necessary trade test. The said Rules were amended vide SRO 185 dated 01.11.1994 wherein it was provided that whenever a junior is considered for selection by virtue of satisfying the minimum service conditions, all persons senior to him are to be allowed to participate in the Selection. Though the Applicant was senior to Respondent No. 3 (Sri Rajendra Ray), he was not allowed to take part in the trade test for promotion on the ground that the applicant joined the service after Respondent No.3 for which the Respondent No.3 was promoted to Skilled Grade on 14.08.2001 whereas the applicant was promoted to the Skilled Grade on 01.03.2002. Respondent No.2 published the seniority list of DBW/Skilled on 10.12.2003 (Annexure-A/4) in which the name of the applicant was shown at Sl.No. 296 and the name of Respondent No.3 was shown at Sl.No. 251. Thereafter, both the Applicant and Respondent No.3 were promoted to DBW/HS Grade on 20.05.2003 along with others. It is the case of the Applicant that being deprived of promotion, on the pretext of late joining the post at the initial grade, though placed in higher position in

the merit list, the aggrieved employees namely S/Shri P.K. Mohanty, S. N.Paikray and Manoj Kumar Acharya filed representations praying for placement of their names in the seniority list above the employees shown senior to them due to their earlier joining at the initial grade and for granting them the consequential benefits and as per the order of the competent authority i.e. Ordnance Board, they were allowed seniority as per the merit list prepared at the time of selection and accordingly they were also allowed promotion notionally to higher grades from the date their juniors got the promotion. Though the applicant is senior to the above three persons, his seniority was not restored despite representations made by him time and again. While the matter stood thus, Respondent No.2 issued draft seniority list vide Notification No. 2032/Seniority/I dated 01.01.2009 in the official web site. It is his case that as the said seniority list could not be notified in general way, he was deprived of ventilating his grievance against the said draft seniority list in time. However, he submitted a representation against the said seniority list on 09.09.2009. Thereafter, when in pursuance of the order of the Ministry of Defence dated 14.06.2010 restructuring of cadre by placing 50% of the DBW / HS as HS-I with GP Rs.2800/- and 50% as HS II with grade pay Rs.2400/- with effect from 01.01.2006 based on such draft seniority list dated 01.01.2009 was undertaken by the Respondent-Department, the applicant by making representations dated 01.05.2011 & 13.05.2011 has brought to the notice of the authority that if restructuring of cadre is undertaken without considering his prayer for correction of his place and position in the seniority list, he will be deprived of his legitimate due of getting the benefit of such restructuring of cadre. But without paying any heed to the successive representations made by him, Respondent-Department published the draft seniority list on 11.07.2011 (Annexure-A/11) showing the name of Respondent No.3 at Sl.No.199 and the name of the applicant at Sl.No. 273 and by virtue of such incorrect placement in the seniority list, while Respondent No.3 was shown in the grade of HS I, he was shown in the grade of HS II w.e.f. 01.01.2006. Being aggrieved, he again submitted a representation on 27.08.2011 but his grievance is that the Respondent No.2 without considering such representation published the final seniority list on 01.01.2012 showing the applicant as junior to

Respondent No.3. In the said seniority list, the name of the Respondent No.3 was shown at Sl.No.189 whereas the name of the applicant was shown at Sl.No.263. Hence he has filed this OA with the aforesaid prayer.

2. Despite service of notice, Respondent No.3 has neither appeared nor filed any counter.

3. However, counter has been filed by Respondent-Department stating therein that as the Secretary, Government of India, Ministry of Defence (Production Unit) Defence Head Quarters, New Delhi has no role in the matter, he should not have been arraigned as Respondent No.1 in this OA.

4. It has been emphatically stated that the applicant having joined as a DBW in the semi skilled grade on 14.09.1998 was shown at Sl.No.124 i.e. above the Respondent No.3 (Sl.No.128) in the seniority list of DBW/Semi Skilled issued as on 01.01.2001. Subsequently, after passing the Trade Test, he was promoted to DBW/Skilled grade w.e.f. 01.03.2002. The Headquarters (Ordnance Factory Board, Kolkata), under whose supervision the factory at Badmal functions issued instruction dated 24.12.2002 stating therein the criteria of determination of seniority in the Ordnance Factories. In Pt.No.3 of the said instruction it was categorically stated that seniority of an employee has to be counted from the date of his promotion to Skilled Grade and not from the date of induction/entry/promotion in Semi Skilled Grade. The said instruction was issued on the basis of the provisions existing in the SRO and orders of various courts on counting of seniority of the employees working under the Industrial Establishment. Accordingly, the seniority position of the applicant and others in Skilled Grade, as on 10.12.2003, was recast/refixed and Respondent No.3 was shown as senior to Applicant as the former was in Skilled Grade earlier to the latter. Based on the said seniority list, promotion to higher grade was effected and the applicant was placed in HS grade w.e.f. 20.5.2003 but at that point of time he did not raise any objection against his placement in the seniority list or promotion to HS Grade. Since then, separate trade/grade -wise seniority lists are being maintained based on the date of holding of respective grades by the employees as per the extant instructions on the subject. The matter relates to the seniority list published in the year 2003 in Skilled Grade whereas the applicant has filed this OA after a gap of nine years virtually

seeking correction of his position shown in the seniority list published in the year 2003 and thus, this OA, being hit by the law of limitation as enumerated in Section 21 of the Administrative Tribunals Act, 1985, is liable to be dismissed.

5. In so far as merit of the matter is concerned, it has been stated that the applicant joined as DBW in the semi skilled grade on 14.09.1998. After completing three years in the grade, he appeared in the trade test and on being declared successful in the said test, was promoted to DBW/Skilled Grade w.e.f. 01.03.2002. Seniority list of Skilled grade, following the instruction of OFB Kolkata, was recast and issued on 10.12.2003 showing the name of the applicant at Sl.No. 296 and the name of Respondent No.3 at Sl.No. 251 (Aneexure A4) based on the respective dates of holding the Skilled Grade by them. Applicant did not raise any objection on placement of his name in the said seniority list at that point of time, rather he enjoyed the promotional benefit to the next higher grade i.e. Highly Skilled w.e.f. 20.05.2003.

6. In so far as the case of S/Shri P.K.Mohanty, S.N.Paikray and Manoj Kumar Acharya is concerned, it has been stated in the counter that they were granted the notional promotion to higher grades consequent upon the order dated 16.02.2009 in OA Nos. 285 & 286 of 2008 filed by them before this Tribunal and upheld by the Hon'ble High Court of Orissa vide order dated 31.03.2010 in WP (C) No. 78 and 79 of 2010. The applicant did not file any such case if at all he was not satisfied by the action of the Respondent-Department in placing him below the Respondent No.3. By placing reliance on the representation dated 09.09.2009 at Annexure-A/8, it has been stated that in the said representation the applicant has requested for rectification of seniority list in DBW cadre on the basis of the ratio 80:20 fixed for direct recruitment and promotion whereas the instant OA has been filed on a different context. The position in the seniority list was fixed as per the extant rules/orders on the subject after examining/considering the representations submitted by the applicant and others. In so far as restructuring of cadre is concerned, it has been stated that OFB order dated 13.12.2010 on cadre restructuring was to be completed as early as possible. The administration processed the matter and completed the same by 31.3.2011 in which

Respondent No.3 was promoted to HS I grade w.e.f. 1.1.2006. Subsequently, after the said restructuring is implemented seniority list as on 1.4.2011 was prepared and published on 11.7.2011. As the applicant is now in HS II grade, he has been rightly placed at Sl.No. 273 and Respondent No.3 in HS I grade at Sl.No. 199.

7. On the above grounds the Respondent-Department while opposing the prayer of the applicant have prayed for dismissal of the OA both on the ground of law of limitation as provided in Section 21 of the A.T. Act, 1985 as also on merit.

8. Applicant has filed rejoinder in which it has been stated that the Respondents are not free to take any action which is not permissible under law. In SRO No. 185 dated 01.11.1994 it has been provided that where the conditions of minimum service has been indicated as an eligibility criteria for promotion, if any junior has been considered fulfilling such condition, then the senior one must also be considered irrespective of the fact that he has fulfilled the eligibility or not. The aforesaid fact has been considered and the respondents have rectified their mistake at the time of promoting the applicant to the "Highly Skilled Grade" at par with juniors even though the junior was promoted to the "Skilled Grade" earlier than the applicant. Therefore the Respondent Department having rectified their mistakes to some extent, the same cannot be re-agitated. It has been stated that looking into the prayer made in the OA it cannot be accepted that the present OA is beyond the period of limitation and hence the stand taken in the counter is totally absurd. The Respondents have resorted to falsehood to mislead this Tribunal. The seniority list published in the year 2003 (Annexure A4) was provisional in nature. At no point of time the Respondents published the final seniority list for which the applicant can relinquish his right to challenge the same. The administration promoted the persons including the applicant and respondent No.3 to Highly Skilled Grade w.e.f. 20.05.2003 to maintain uniformity. The order dated 16.02.2009 of this Tribunal in OA No. 285 and 286 of 2008 is in no way concerned with seniority matter. The applicants in the said OAs challenged their reversion. The Respondents had *suo motto* recalled the order of reversion and writ petitions filed by the Respondent-Department were ultimately dismissed by the Hon'ble High

Court of Orissa. The Respondent-Department, in a pick and choose manner, have extended the benefit to only three persons and did not take any decision on the representation filed by the applicant. In stating so, the Applicant has prayed for the relief claimed in this OA.

9. In course of hearing, while reiterating the stand taken in the OA and rejoinder, Mr.S.K.Ojha, Learned Counsel appearing for the Applicant, laid much credence on the point that delay in joining was not due to the fault of the applicant but for the reason of pendency of court cases filed by some of the unsuccessful candidates. Some of the selected candidates who were residing nearer to the Factory immediately joined their respective posts. However, the name of the applicant was correctly shown in the gradation list published on 24.9.2002 in Semi Skilled Grade. As per Rules, an employee on completion of three years in a particular grade is eligible to be promoted to the next higher grade. Accordingly, the administration considered the cases of the employees continuing in Semi Skilled Grade and promoted those who have joined earlier and completed three years at the time of consideration even though they were junior to the applicant on the basis of the merit position so also gradation list dated 24.09.2002. While doing so, the Respondent-Department failed to take note of the basic rule of recruitment. However, subsequently, the applicant was promoted to skilled grade after completion of three years from the date of joining in the initial grade. Based on the date of promotion to Skilled Grade seniority list was published on 10.12.2003. But subsequently all of the employees were promoted to Highly Skilled Grade on one date and seniority list dated 01.01.2012 was published taking into account the seniority position in the Skilled Grade. It has been stated that the applicant did not approach before any court of law as against the seniority dated 10.12.2003 but he did not keep quite on the same and went on making representations expecting favourable reply thereon. He filed this OA when the respondent-department granted benefit of seniority and notional promotion to other similarly situated employees even though they were juniors to the applicant in the grades of Semi Skilled, Skilled and also Highly Skilled. The respondent-department *suo-moto* granted the benefits of seniority to similarly situated persons who are even junior to the applicant but denied the same to the

applicant for reasons best known to the respondent - department. This being a case of discrimination violating the provisions enshrined in Articles 14 and 16 of the Constitution of India, the hyper-technicality of delay should not stand as a bar for granting the relief to the applicant. Accordingly, he has prayed for the relief claimed in this OA.

10. On the other hand, Mr.S.Barik, Learned ACGSC appearing for the Respondent-Department, by reiterating the stand taken in the counter has submitted that there is no concept in service jurisprudence that one can be placed in the appropriate position at par with another employee as prayed for by the applicant. Either the employee concerned can claim to be above or below somebody in the seniority list. As such the prayer made being vague and absurd this OA is liable to be dismissed. Besides the above, Mr.Barik has laid much emphasis on the point of limitation and non joinder of necessary and proper parties and has prayed for dismissal of this OA.

11. We have considered the contentions advanced by the respective parties and perused the materials placed on record. We may state that one cannot claim seniority as a fundamental right but at best as a civil right. The applicant was shown to be junior to Respondent No.3 in the seniority list published in the year 2003 but he did not challenge the same at any point of time before any court of law. If he was really aggrieved by such placement and the Respondent-Department did not respond to his successive representations, he could not have kept silent over the matter as it is well settled law that repeated representations would not save limitation (Ref: *Naresh Kumar v Department of Atomic Energy and others (2010) 2 SCC (L&S) 436)*. He has filed this OA after the seniority list was published on 01.01.2012 reiterating/maintaining the position of the seniority as was shown in the seniority list published in 2003. We are reminded by a decision of the Hon'ble Apex Court in the case of *State of Tamil Nadu Vs. Seshachalam, 2008 (1) SLJ 413* wherein it was held that filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a Government servant may deprive him of the benefit which had been given to others. Article 14 of the constitution of

India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant. Further, delay and laches is a very significant factor in granting relief. Court cannot grant relief to recalcitrant petitioners. No one in a service can sleep over the question of seniority for such a long time, in the instant case nine years and then come to court seeking a relief which will upset the seniority of a number of persons who had been shown as seniors in the respective seniority lists. Therefore, on the face of it, a declaratory relief that will have the effect of altering a nine year old seniority list cannot be allowed and this will upset a settled thing.

12. We find that the prayer of the applicant in this OA is to direct the Respondent Nos. 1 & 2 to assign and place the applicant in the appropriate position at par with Respondent No.3 modifying the seniority list dated 01.01.2012. We are at a loss to understand as to how the applicant can be placed at par with Respondent No.3 in the seniority list. Either he can be placed above or below the Respondent No.3. But certainly he cannot be placed at par with Respondent No.3. This prayer of the applicant appears to be vague and unheard of in service jurisprudence. This Tribunal also lacks jurisdiction to grant the relief other than what is prayed for in the OA. In this connection, it is profitable to place reliance on a decision of the Hon'ble Apex Court in the case of *Bharat Amratlal Kothari vs. Dosukhan Samadkhan Sindhi and Others, AIR 2010 SC 475* wherein it has been held that it is incumbent on petitioner to claim all reliefs he seeks from court. Though Courts have wide discretion in granting relief but it cannot grant relief not even prayed for by the petitioner by ignoring and keeping aside norms and principles governing grant of relief.

13. We also find that in the seniority list published as on 01.01.2012, the name of applicant has been shown at Sl.No.263 and the name of Respondent No.3 is at Sl.No. 189. In the event the prayer of the applicant is allowed then he will have to march over the persons ranked between 263 and 189. But except Respondent No.3 none others have been arraigned as party Respondent in this OA. Non-joinder of all of them who are to be affected in case the prayer of the applicant is allowed as party respondent suffers the constitutional requirement as it is trite law that in the absence of a notice of

the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice.

14. Last but not the least, we would like to place reliance on the decision of the Hon'ble Apex Court in the case of *Vijay Kumar Kaul vs. Union of India, (2012) 7 SCC 610* wherein their Lordships have considered the effect of filing cases challenging the seniority list after a lapse of time as also non joinder of party. The relevant portion of the decision is quoted herein below:

> *"**20.** In the course of hearing, the learned Senior Counsel for the parties fairly stated that the decision rendered by the High Court of Punjab and Haryana has not been challenged before this Court and, therefore, we refrain from commenting about the legal defensibility of the said decision. However, it is clear as noonday that the appellants, neither in their initial rounds before the Tribunal nor before the High Court, ever claimed any appointment with retrospective effect. In fact, the direction of the Tribunal in respect of Appellant 4 in the OA preferred by Appellant 4 was absolutely crystal clear that it would be prospective. The said order was accepted by the said appellant. However, as is manifest, after the decision was rendered by the Punjab and Haryana High Court wisdom dawned or at least they perceived so, and approached the Principal Bench for grant of similar reliefs.*
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> **xx xx xx xx xx xx xx xx**
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> ***22.** As far as Appellant 4 is concerned, we really see no justifiable reason on his part to join the other appellants when he had acceded to the first judgment passed in his favour to a limited extent by the Tribunal. This was an ambitious effort but it is to be borne in mind that all ambitions are neither praiseworthy nor have the sanction of law. Be that as it may, they approached the Tribunal sometime only in 2004. The only justification given for the delay was that they had been making representations and when the said benefit was declined by communication dated 31-7-2004, they moved the Tribunal. The learned Senior Counsel for the appellants fairly stated that as the doctrine of parity gets attracted, they may only be conferred the benefit of seniority so that their promotions are not affected.*
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> ***23.** It is necessary to keep in mind that a claim for seniority is to be put forth within a reasonable period of time. In this context, we may refer to the decision of this Court in P.S. Sadasivaswamy v. State of T.N.[7] wherein a two-Judge Bench has held thus: (SCC p. 154, para 2)*
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> > "2. … 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."

24. In *Karnataka Power Corpn. Ltd.* v. *K. Thangappan*[8] this Court had held thus that: (SCC p. 325, para 6)

> "6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the court as pointed out in *Durga Prashad* v. *Controller of Imports and Exports*[9]. Of course, the discretion has to be exercised judicially and reasonably."

25. In *City and Industrial Development Corpn.* v. *Dosu Aardeshir Bhiwandiwala*[10] this Court has opined that: (SCC p. 174, para 26)

> "*26.* ... One of the grounds for refusing relief is that the person approaching the High Court is guilty of unexplained delay and the laches. Inordinate delay in moving the court for a writ is an adequate ground for refusing a writ. The principle is that the courts exercising public law jurisdiction do not encourage agitation of stale claims and exhuming matters where the rights of third parties may have accrued in the interregnum."

26. *From the aforesaid pronouncement of law, it is manifest that a litigant who invokes the jurisdiction of a court for claiming seniority, it is obligatory on his part to come to the court at the earliest or at least within a reasonable span of time. The belated approach is impermissible as in the meantime interest of third parties gets ripened and further interference after enormous delay is likely to usher in a state of anarchy.*

27. *The acts done during the interregnum are to be kept in mind and should not be lightly brushed aside. It becomes an obligation to take into consideration the balance of justice or injustice in entertaining the petition or declining it on the ground of delay and laches. It is a matter of great significance that at one point of time equity that existed in favour of one melts into total insignificance and paves the path of extinction with the passage of time.*

28. *In the case at hand, as the factual matrix reveals, the appellants knew about the approach by Parveen Kumar and others before the Tribunal and the directions given by the Tribunal but they chose to wait and to reap the benefit only after the verdict. This kind of waiting is totally unwarranted.*

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30. *In K.C. Sharma[3] the factual scenario was absolutely different and thus, distinguishable. In C. Lalitha[5] it has been held that: (SCC p. 756, para 32)*

> "*32.* Justice demands that a person should not be allowed to derive any undue advantage over other employees. The concept of justice is that one should get what is due to him or her in law. The concept of justice cannot be stretched so as to cause heart-burning to more meritorious candidates."
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> In our considered opinion, the said decision does not buttress the case of the appellants.
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33. *Thereafter the Bench proceeded to state as follows: (Krishan Bhatt case[6], SCC p. 30, para 23)*

> "*23.* In fairness and in view of the fact that the decision in *Abdul Rashid Rather* had attained finality, the State authorities ought to have gracefully accepted the decision by granting similar benefits to the present writ petitioners. It, however, challenged the order passed by the Single Judge. The Division Bench of the High Court ought to have dismissed the letters patent appeal by affirming the order of the Single Judge. The letters patent appeal, however, was allowed by the Division Bench and the judgment and order of the learned Single Judge was set aside. In our considered view, the order passed by the learned Single Judge was legal, proper and in furtherance of justice, equity and fairness in action. The said order, therefore, deserves to be restored."

35. *In the case at hand it is evident that the appellants had slept over their rights as they perceived waiting for the judgment of the Hon'ble Punjab and Haryana High Court would arrest time and thereafter further consumed time submitting representations and eventually approached the Tribunal after quite a span of time. In the meantime, the beneficiaries of the Hon'ble Punjab and Haryana High Court judgment, as we have been apprised, have been promoted to the higher posts. To put the clock back at this stage and disturb the seniority position would be extremely inequitable and hence, the Tribunal and the Hon'ble High Court have correctly declined to exercise their jurisdiction.*

On NON-JOINDER :

36. *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 jeoparadise their interest. When they have not been impleaded as parties such a relief is difficult to grant.*

37. In this context we may refer to the decision in Indu Shekhar Singh v. State of U.P. wherein it has been held thus: (SCC p. 151 at para 56)

> "*56.* 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."

38. In Public Service Commission v. Mamta Bisht this Court while dealing with the concept of necessary parties and the effect of non-impleadment of such a party in the matter when the selection process is assailed observed thus: (SCC pp. 207-08, paras 9-10)

> "*9.* ... in *Udit Narain Singh Malpaharia* v. *Board of Revenue*[13], 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 'CPC') provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable. (Vide *Gulabchand Chhotalal Parikh* v. *State of Gujarat*[14], *Babubhai Muljibhai Patel* v. *Nandlal Khodidas Barot*[15] and *Sarguja Transport Service* v. *STAT*[16].)
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> *10.* In *Prabodh Verma* v. *State of U.P.*[17] and *Tridip Kumar Dingal* v. *State of W.B.*[18], it has been held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties."

39. From the aforesaid enunciation of law there cannot be any trace of doubt that an affected party has to be impleaded so that the doctrine of audi alteram partem is not put into any hazard."

15. In view of the discussions made above, we find, this OA deserves to be dismissed and is accordingly dismissed by leaving the parties to bear their own costs.

(R.C.Misra)
Member (Admn.)

(A.K.Patnaik)
Member (Judicial)

aa.