के.प्र.प्र. (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत निःशुल्क प्रति

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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

O. A. 65/2003, M.A. 37/2003 (in OA 65/03), OA 293/2003
O.A. 294/2003 and O.A. 295/2003

JODHPUR THIS IS THE 6th, March **2009**

CORAM :

HON'BLE MR. N.D.RAGHAVAN, VICE CHAIRMAN
HON'BLE MR. SHANKAR PRASAD, MEMBER [A]

Mithai Lal S/o Shri Jhunnu aged about 42 years working as Assistant Station Master at Nagaur, North West Railway, Nagaur, R/o T-16,A, Railway Colony, Nagaur (Raj).

.....Applicant [OA 65/2003 & MA 37/2003]

Raghu Nath Bagdia S/o Sh. Jawana Ram Bagdia aged about 42 years, working as Asstt. Station Master at Didwana, North West Railway, Didwana, R/o Railway Colony, Didwana, District Nagaur.

.....Applicant [OA 293/2003]

Sumer Singh Rathore S/o Shri Narain Singh Rathore, aged about 51 years, working as Asstt. Station Master at Sujangarh, North West Railway, R/o Railway Quarters Post Office Sujangarh, District Churu.

....Applicant [OA 294/2003]

Sukh Ram Meena S/o Shri Chotu Ram Meena, aged about 47 years, working as Asstt. Station Master at Merta Road, North-West Railway, R/o Quarter No. T-7-D,Railway Traffic Colony, Merta Road.

.....Applicant [OA 295/2003]

For Applicants : Mr. S.K.Malik, Advocate.

Vs.

1-Union of India through the General Manager, North West Railway, Jaipur.

2-Divisional Personnel Officer, North-West Railway, Jodhpur.

.....Respondents.

For Respondents : Mr. Salil Trivedi, Advocate.

.....

ORDER
[PER SHANKAR PRASAD, MEMBER(A)]

A common order will govern all these OA as they arise out of the same set of facts and the same questions of law are involved therein. We have taken OA 65/2003 as the main O.A. The applicant has sought for the following reliefs :-

COMPARED & CHECKED

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"(A) That this Hon'ble Tribunal may kindly be pleased to set-aside and quash the impugned order Annex. A/1 dated 14.2.2002 passed by the 2nd respondent.

(B) The respondents may kindly be directed to assign the seniority to the applicant as Station Master, first, in terms of Rule 510 of the IREM Vol. I and subsequently to grade Rs. 1600-2660, 2000-3200 and then 2375- as per Annex.A/6.

(C) That any other relief which is found just and proper may also be passed in favour of the applicant.

(D) That the cost of the application may kindly be awarded."

2- The Railway Recruitment Board, Ajmer, had issued Employment Notice No. 1/85 for a number of posts including Traffic Apprentice and Prob. ASM. The applicant was selected as a Traffic Apprentice and sent for three year training vide order of 1987. During the currency of the said Training, the Railway Board issued a Circular dated 15.5.1987 regarding Traffic Apprentices / Commercial Apprentices. On successful completion of Apprenticeship, he was appointed as an ASM in the scale of Rs. 1400-2300 vide order dated 30.08.1989 (Annex.R/2). He had accepted the terms thereof (Annex.R/3). Their posting orders were also issued (Annex.R/4) subsequent to the decision of CAT, Madras Bench in OA No. 322/1989 and 488/1987, OA 117/1991 was preferred before the Jodhpur Bench for grant of similar benefits. The Tribunal allowed the O.A. He was placed in the scale of Rs. 1600-2660 and assigned seniority. He was granted restructuring benefits in the scale of Rs. 2000-3200 w.e.f. 01.03.1993. The matter relating to interpretation of said O.M. dated 15.5.1987 finally reached Apex Court and the Constitution Bench in ***Union of India & Ors. Vs. M. Bhaskar & Ors.***, (1996) 4 SCC 416 held as under :-

"13. As to the last document, we would say that the same is inconsequential inasmuch as the Principal had only

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forwarded the representation. Though it is correct that the respondents were called for training from 1989, that is not enough to distinguish their case from other respondents inasmuch as they had come to be recruited pursuant to an advertisement of January 1985; and so, they have to be treated as pre-1987 apprentices. What has been stated in sub-para (xii) cannot be taken in isolation; that has to be understood along with other provisions contained in the memorandum. If this were to be so done, we do not think if we would be justified in treating these respondents differently from other pre-1987 apprentices because they were called for training in 1989. We have taken this view because it is known that at times there are no vacancies in training schools and so the training programme has to be spread out. We, therefore, reject the contention advanced on behalf of these respondents by Shri Das. Appeal @ SLP (C) No.15438 of 1994.

17. All the appeals, therefore, stand disposed of by setting aside the judgments of those tribunals which have held that the pre-1987 Traffic / Commercial Apprentices had become entitled to the higher pay scale of Rs. 1600-2660 by the force of memorandum of 15.5.1987. Contrary view taken is affirmed. We also set aside the judgment of the Ernakulam Bench which declared the memorandum as invalid; so too of the Patna Bench in appeal @ SLP (C) No. 15438 of 1994 qua Respondent No.1. We also state that cases of Respondents 2 to 4 in appeals @ SLPs (C) Nos. 2533-35 of 1994 do not stand on different footing.

18. Despite the aforesaid conclusion of ours, we are of the view that the recovery of the amount already paid because of the aforesaid judgments of the Tribunals would cause hardship to the respondents / appellants concerned and, therefore, direct the Union of India and its officers not to recover the amount already paid. This part of our order shall apply (1) to the respondents / appellants who are before this Court; and (2) to that pre-1987 apprentice in whose favour judgment had been delivered by any CAT and which had become final either because no appeal was carried to this Court or, if carried, the same was dismissed. This benefit would be available to no other."

3- Pursuant to the aforesaid decision, the respondents issued an order dated 16.9.1996 reverting them as ASM in the scale of Rs. 1400-2300 and also assigning them seniority in that scale. These four OA applicants along with four others, sought quashing of these reversion orders by filing OA 309/96. The Tribunal took note of the para 17 and 18 of the decision in ***M. Bhaskar*** (supra) and held :-

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(A)

"8.The application is dismissed declaring the impugned action of the respondents vide Annex.A/1 and Annexs. A/2 to A/8A, as being consistent to the law laid down by Hon'ble the Supreme Court in Union of India and Others Vs. M. Bhaskar and Others. In case, the judgement Union of India and Others Vs. M. Bhaskar and Others, is reversed by the Constitution Bench of the Supreme Court in future, the applicants would be entitled to be put back to the position they occupied prior to the passing of the impugned orders in this case. There is no orders as to costs."

4. The appellant in ***E.S.P. Rajaram and Ors. Vs. Union of India and Ors.,*** 2001 SCC (L&S) 352 had been appointed as Traffic Apprentice before 15.05.1987. Their contention before the Apex Court was that the Madras Bench had accepted their claim and the S.L.P. against the same had been dismissed. Hence, the directions in Para 17 and 18 were not sustainable as these applicants had not been put to notice. They had been reverted to the lower pay scale pursuant to the decision in ***M. Bhaskar***.The Constitution Bench explained the rationale behind para 18 of the earlier decision. While dismissing the SLP, it also held :-

"23. In the case on hand the controversy relate to the scale of pay admissible for Traffic Apprentices in the Railways appointed prior to the cut-off date. The controversy in its very nature is one which applies to all such employees of the Railways; it is not a controversy which is confined to some individual employees or a section of the employees. If the judgment of the Tribunal which had taken a view contrary to the ratio laid down by judgment of this Court in M. Bhaskar case was allowed to stand then the resultant position would have been that some Traffic Apprentices who were parties in those cases would have gained an unfair and undeserved advantage over other employees who are or were holding the same post. Such enviable position would not only have been per se discriminatory but could have resulted in a situation which is undesirable for a cadre of large number of employees in a big establishment like that of the Indian Railways. To avoid such a situation this Court made the observations in para 17 of the judgment. At the cost of repetition we may reiterate that since the main plank of argument of the appellants was that since they were not parties in the case they had no opportunity to place their case before this Court made the observations in para 17 of the judgment as aforementioned and we specially asked learned counsel appearing for the parties to place the argument in support of their challenge to the

observations made by this Court on merits. No point of substance assailing the observations on merits could be placed by them. The only contention made in that regard was that some of the employees who were given benefit in the judgments of CAT have got further promotions and they may lose the benefit of such promotion in case the observations made in para 17 of the judgment are allowed to stand as it is. We are not impressed by the contention raised. If some employees were unjustly and improperly granted a higher scale of pay and on that basis were given promotion to a higher post then the basis of such promotion being non-existent; the superstructure built on such foundation should not be allowed to stand. This is absolutely necessary for the sake of maintaining equality and fair play with the other similarly-placed employees. However, in our considered view, it will be just and fair to clarify that any amount drawn by such employees either in the basic post (Traffic Apprentice) or in a promotional post will not be required to be refunded by the employee concerned as a consequence of this judgment. This position also follows as a necessary corollary from the observations made by this Court in para 18 of the judgment in M. Bhaskar case."

5- The applicant had submitted a representation on 14.01.2002 that his seniority was required to be fixed as per Para 510 of IREM and not as per Para 509 of IREM (Annex.A/7). The same was rejected by order dated 14.02.2002 (Annex.A/1), impugned order. The case of applicant in brief is that as he was appointed after 15.05.1987, he was required to be assigned SM grade and not ASM grade. It is contended that he was required to be adjusted in 13% of posts of SM in the scale of Rs. 455-700 (Rs.1400-2300) as mentioned in para 510 of IREM and not as ASM in the same scale in para 509 of IREM. The 1993 restructuring order provided for two alternative formulations i.e. of combined ASM/SM cadre and separate ASM/SM cadres. As the post of ASM was separately advertised, his seniority should have been assigned in alternative – II. He represented orally many times and finally submitted his representation, which was rejected. The applicant has placed reliance on para (xii) and (xiii) of Circular dated 15.5.1987. Reliance is placed on Para 302 of IREM. Reliance is placed on the

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decision in OA No. 304/1996. It is stated under para 7 of the OA that applicant had preferred OA 47/2003 to challenge the said order, which was withdrawn. It is stated in para 3 of the OA, that OA is within time. However, MA 37/2003 is moved for condonation of delay.

Rejoinder is filed almost three years after the filing of reply. It is stated therein that issue of challenging seniority list dated 10.10.1996, does not arise at all. The applicant neither assails the seniority of any individual nor any group. He only wants seniority as per Para 510 of IREM. Contention based on Para 510 IREM was raised for the first time and was replied to without raising the plea of limitation. The order passed by the Tribunal pertains to reversion and has nothing to do with seniority. The question of assailing the seniority list dated 30.12.1996, 28.08.2000 and 20.05.2002 of the ASM grade does not arise. Reliance is placed on the decision in OA 304/1996, which has been upheld in Writ Petition 4273/1998 (Annex.- A/8 & A/9). The applicant is a similarly situated employee. Traffic Apprentices are a separate class and are placed over and above ASM. Reliance is placed on Sub para (xii) & (xiii) of O.M. dated 15.05.1987. It is stated that his seniority is required to be fixed above Sh. H.S.D. Charan in the seniority list dated 28.01.1993.

6- The respondents filed a detailed reply. The respondents stated that applicant never challenged the seniority list of SM dated 10.10.1996. He has tried to claim seniority, which he never claimed before. The applicant challenged his reversion order but did not challenge the seniority assigned therein. He has not challenged the seniority list of ASM published on 30.12.1996, 28.08.2000 and

20.05.2007. The OA is not maintainable. Seniority is not a continuous cause of action. OA is barred by limitation. Having accepted appointment of as ASM in the scale of Rs. 1400-2300, he can't challenge the same order. After his reversion, his name was not shown in the seniority list dated 10.10.1996 of SM in pay scale of Rs. 2000-3200. The percentage prescribed for ASM grade Rs. 330-560 was 13% and total percentage in two higher grades was 87% after IV Pay Commission. On this division, Alternative II, was in vogue. He was rightly assigned seniority in the grade of ASM Rs. 1400-2300 as per the Para 509 IREM. He was correctly replied in view of dismissal of OA 309/1996. The applicant was not appointed in SM 13% category. Para 302 IREM only provides that seniority is governed by date of appointment to the grade. The issue involved in OA 304/1996 was totally different. The applicant has filed the present OA after seven years of the OA and concealing the decision in OA 309/1996. The OA is fit to be dismissed.

Reply is filed to MA for condonation of delay. It is submitted that M.A. is fit to be dismissed.

7- The learned counsel for the applicant has taken us through para 122, 509 & 510 of IREM to contend that his case was required to be considered as per Para 510 of IREM. He has placed reliance on the decision in OA 57/1998. He has stated that in Lucknow Division of Northern Railway, they were treated as Station Master. He has contended that the issue relating to seniority was not raised in ***M. Bhaskar*** (supra) or the OA against reversion and hence those

decisions cannot operate as res judicata. He has placed reliance on the following decisions :

(a) Ratio Decidendi

(b) Res judicata

(c) Seniority

(d) Limitation and

(e) Non-joinder of necessary party.

8- The learned counsel for the respondents contends that the applicant had earlier unsuccessfully challenged the reversion order. He cannot now challenge the same order again. This is barred by principles of constructive res judicata and principles akin to Order 2 Rule 2 of Civil Procedure Code. They cannot argue on a basis, which is contrary to their appointment order. Relief of seniority is not claimed. The cogent grounds have not been given in the MA for condonation of delay. The O.A. is barred by limitation. None of the persons likely to be affected by re-assignment of seniority are impleaded. The O.A. is bad for non-joinder of necessary party. The decision in OA 304/1996 and OA 57/1998 are distinguishable. Merely because the Lucknow Division has extended benefits the same cannot be a ground for granting this relief.

9- We have heard the learned counsels.

10- Coming to the facts of this case, we find that the Apex Court in ***M. Bhaskar*** (supra) has interpreted the Circular dated 15.5.1987. It has held that Sub paras (xii) and (xiii) cannot be read in isolation and has to be treated as part of the entire scheme. While dismissing the review preferred against this decision, it has also clarified the reasons for para 18 of the earlier judgement and given detailed rationale for it. The applicant has been reverted pursuant to orders of the Apex Court

in ***M. Bhaskar*** (supra). The said order fixes his seniority also. The argument based on Para 510 of Indian Railway Establishment Manual, may or may not have been advanced in the case of ***M. Bhaskar*** (supra). It was certainly open to the applicant to advance arguments based on Para 510 of I.R.E.M., when he challenged the reversion order. But this was not done. The challenge based on this paragraph has been raised for the first time in 2001 or 2002.

11- A Three Judge Bench of the Apex Court in ***Bhoop Singh Vs. Union of India,*** AIR 1992 SC 1414, has held as under :-

> ***"A person cannot be permitted to challenge the termination of his service after a period of twenty-two years, without any cogent explanation for the inordinate delay, merely because others similarly dismissed had been reinstated as a result of their earlier petitions being allowed. Accepting the petitioner's contention that the petitioner is entitled to the relief of reinstatement like the others dismissed with him and then reinstated and the question of delay or laches does not arise would upset the entire service jurisprudence. It is expected of a government servant who has a legitimate claim to approach the Court for the relief he seeks within a reasonable period. This is necessary to avoid dislocating the administrative set-up after it has been functioning on a certain basis for years. The impact on the administrative set-up and on other employees is a strong reason to decline consideration of a state claim unless the delay is satisfactorily explained and is not attributable to the claimant. The lapse of a much longer unexplained period of several years in challenging termination in the case of the petitioner is a strong reason not to classify him with the other dismissed constables who approached the Court earlier and got reinstatement. Secondly inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. Art. 14 or the principle of non-discrimination is an equitable principle and, therefore, any relief claimed on that basis must itself be founded on equity and not be alien to that concept. Grant of the relief to the petitioner, in the present case, would be inequitable instead of its refusal being discriminatory."***

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12- The above decision makes it clear that the decision in another case cannot provide a cause of action. Each case has to stand on its own legs.

13- The learned counsel for applicant has placed reliance on the decisions mentioned under heading (a) in para 7 to contend that the decisions in ***M. Bhaskar*** (supra) will not apply in matters relating to seniority. It is also contended that as per the decisions cited under para 7 (b), the decision in ***M. Bhaskar*** and the decision in O.A. 309/1996 filed against the reversion order would not act as res judicata.

14- Explanation IV Below Section 11 of Civil Procedure Code reads as under :-

> ***"Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit."***

15- A Three Judge Bench in ***State of Uttar Pradesh Vs. Nawab Hussain,*** AIR 1977 SC 1680, has held:-

> ***"The principle of estoppel per rem judicatum is a rule of evidence. It may be said to be "the broader rule of evidence which prohibits the reassertion of a cause of action." This doctrine is based on two theories: (i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It therefore serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action for otherwise the spirit of contentiousness may give rise to conflicting judgments of equal authority, lead to multiplicity of actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognize that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot therefore survive the judgment or give rise to another cause of action on the same facts***

This is what is known as the general principle of res judicata. But it may be that the same set of facts may give rise to two or more causes of action. If in such a case a person is allowed to choose and sue upon one cause of action at one time and to reserve the other for subsequent litigation that would aggravate the burden of litigation. Courts have therefore treated such a course of action as an abuse of its process. This is another and an equally necessary and efficacious aspect of the same principle, for it helps in raising the bar of res judicata by suitably construing the general principle of subduing a cantankerous litigant. That is why this other rule has sometimes been referred to as constructive res judicata which in reality, is an aspect or amplification of the general principle."

16- A Three Judge Bench ~~Judgement~~ of the Apex Court in ***Director of Settlements, Andhra Pradesh and Ors. Vs. M. R. Apparao and anr.***, 2002 4 SCC 638 has after referring to a number of decisions held as under :-

"So far as the first question is concerned, Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare that law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has "declared law" it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An "obiter dictum" as distinguished from a ratio decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision. The decision in a judgment of the Supreme Court cannot be assailed on the ground

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that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court (see *Ballabhadas Mathurdas Lakhani v. Municipal Committee, Malkapur* and AIR 1973 SC 794). When the Supreme Court decides a principle it would be the duty of the High Court or a subordinate court to follow the decision of the Supreme Court. A judgment of the High Court which refuses to follow the decision and directions of the Supreme Court or seeks to revive a decision of the High Court which had been set aside by the Supreme Court is a nullity. (See *Narinder Singh v. Surjit Singh* and *Kausalya Devi Bogra v. Land Acquisition Officer*). We have to answer the first question bearing in mind the aforesaid guiding principles. We may refer to some of the decisions cited by Mr Rao in elaborating his arguments contending that the judgment of this Court dated 6-2-1986 cannot be held to be a law declared by the Court within the ambit of Article 141 of the Constitution. Mr. Rao relied upon the judgment of this Court in the case of *M.S.M. Sharma v. Sri Krishna Sinha* wherein the power and privilege of the State Legislature and the fundamental right of freedom of speech and expression including the freedom of the press was the subject-matter of consideration. In the aforesaid judgment it has been observed by the Court that the decision in *Gunupati Keshavram Reddy v. Nafisul Hasan* relied upon by the counsel for the petitioner which entirely proceeded on a concession of the counsel cannot be regarded as a considered opinion on the subject. There is no dispute with the aforesaid proposition of law."

17- The decision of the Three Judge Bench in ***Director of Settlement*** (supra) shows that a decision of the Hon'ble Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court. It further shows that once a principle has been laid down then any decision given contrary to the same is a nullity. This ground could very well have been a ground of attack in the earlier OA but was not raised. We, accordingly are of the view that this demand of the applicant is contrary to the law of land and is also barred by constructive res judicata.

18- In any case, the applicants of OA 304/1996 and applicants of OA 57/1998, had been engaged as Traffic Apprentices after the coming

into force of the revised policy contained in Railway Board's Circular of 15.5.2007. The decision in **M. Bhaskar** (Supra) and ***E.S.P. Rajaram*** (supra) have been given in respect of Apprentices who had been recruited prior to issuance of the revised policy contained in 15.5.1987 or who had been sent on training before that date. These decisions are accordingly of no avail to the applicant.

19- The decision taken by Lucknow Division is contrary to the law laid down in ***M. Bhaskar*** & ***E.S.P. Rajaram***. Article 144 enjoins on the Executive to aid in implementation of the law laid down by Apex Court.

20- The learned counsel for the applicant has depended on the decision in ***Ambika Prasad Mishra*** [7 (c) under para 7] to contend that none needs to be joined. The decision has been given following the law laid down in ***A. Janardana.***

21- We also note that ~~pursuant to~~ this reversion order also fixes the seniority of the applicant in the ASM Grade. His name was not included in the seniority list of Station Masters notified on 10.10.1996. He also did not challenge the seniority assigned to him in the seniority list published in 1996, 2000 and 2002. The only ground taken by the applicant is that he is seeking seniority on the basis of a rule and therefore, no individual or group is required to be joined. The Apex Court in State of ***Punjab Vs. Jogender Singh,*** AIR 1963 SC 913 has held that the question of seniority arise between personnel of each class and not between personnel belonging to different classes. The Apex Court in ***S.P. Shukla Vs. State of Uttar Pradesh,*** AIR 1986 SC

1859, has held that an employee must belong to the same stream before he can claim seniority vis-à-vis others. The applicant has thus to belong to a cadre before he can claim seniority. He was placed in the ASM Grade (Rs.1400-2300) by virtue of his appointment order. The Hon'ble Mr. Justice P.P. Naolekar in his concurring judgement in ***P.S. Gopinathan Vs. State of Kerala,*** (2008) 2 SCC (L&S) 225, has held as under :-

> ***"The act and action of the appellant in accepting his appointment as temporary one, amounts to his assent to the temporary appointment and the appellant throughout till he raised an objection on 28.10.1992 has slept on his right of being appointed permanently on the post of District and Sessions Judge. By his conduct at the time of the issuance of order by the High Court on 29.2.1992 and thereafter issuance of the second appointment order on 15.7.1992 with full knowledge of his own right and the act of the High Court which infringes it, led the High Court to believe that he has waived or abandoned his right."***

22- A Three Judge bench of the Apex Court in ***Prabodh Verma Vs. State of U.P.,*** AIR 1985 SC 167 has held that if number of respondents is large, the applicant must join few in representative capacity. This decision of the three judge Bench will prevail over the decision in ***A. Janardana*** in case of conflict.

23- The OA is bad for non-joinder of necessary party.

24- We have gone through the M.A. The only reason given in the aforesaid M.A. are that his representation for assignment of seniority based on Para 510 was rejected in January 2002 (Annex.A/1). Suppression of seniority is a continuing wrong. This judgement of Tribunal is not on record. It was also not produced at the time of hearing.

25- The learned counsel for the applicant has relied on the decisions mentioned in Sub-para (d) of para 7 Serial (b) regarding ***Bani Singh*** is

on the subject of delay causing prejudice and would rather support the case of applicant. Serial (4) is in context of seniority not being drawn-up as per rules. In the instant case, law is laid down by Apex Court. The remaining judgement and some other judgements of Apex Court have been considered in OA 145/2004, ***Mohd. Salim and Anr. Vs. Union of India and Ors.*** The Tribunal held :

> ***"33. The decisions in Qamarali and Kuldip Chand cases has proceeded on the hypothesis that the orders of termination and publication of seniority list were per se illegal.***
>
> ***The decision in Raja Harish Chandra is in the context of an award under the land acquisition Act and uses the expression 'actual' or constructive notice. The decision in Mst. Katiji, states that the expression 'sufficient causes' should be interpreted liberally. The decision of Hon'ble Gujarat High Court has not noticed the decision in L. Chandra Kumar or the provisions of Rule 8 (4). It is given in the context of compassionate appointment and not interse seniority.***
>
> ***34. The distinguishing features of this case have been set out in paras 9 to 13 above. This is a case regarding inter se seniority of two sets of employees. The seniority assigned to the applicants were corrected retrospectively after 4-5 years. The applicants have nowhere disclosed in the O.A. as to how they came to know the various orders recasting their seniority. We have noted that the name of the applicant had appeared below that of private respondents in the promotion order for First Fireman [later redesignated as Diesel Assistant] and Senior Diesel Assistant. This could be treated as constructive notice to the applicants. The applicants states in para 4.11 of the O.A. that they had objected at that point of time. But no proof of the same has been produced before us.***
>
> ***37. A Three Judge Bench of the Apex Court in the case of State of Punjab and ors. Vs. Gurdev Singh [AIR 1991 SC 2219] after distinguishing of the decision in Syed Qamar Ali (supra) held as under :-***
>
> > ***"A suit for declaration that an order of dismissal or termination from service passed against the plaintiff dismissed employee is wrongful, illegal or ultra vires is governed by Article 113. It cannot be said that there is no limitation for instituting the suit for declaration by a dismissed or discharged employee on the ground that the dismissal or discharge was void or inoperative. If a suit is not covered by any of the specific articles prescribing a period of limitation, it must fall within the residuary article. The purpose of the residuary article is to provide for cases, which could not be covered by any other provision in the Limitation Act. The party***