

CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION NO: 98/2005

DATE OF ORDER: 29.12.2006

K C Vyas and 2 ors. : Applicants

Mr. S.K. Malik & : Advocate for the Petitioners
Mr. Dayaram

VERSUS

The UOI & Ors. : Respondents

Mr. Prajapat & : Counsel for the Respondents 1 to 4
Mr. Ravi Bhansali

Mr. Manoj Bhandari : Counsel for the respondents 5 & 6

CORAM:

Hon'ble Mr. J K Kaushik, Judicial Member
Hon'ble Mr. R.R. Bhandari, Administrative Member.

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1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

R.Bhandari
(R.R. Bhandari)
Administrative Member

J.K Kaushik
(J K Kaushik)
Judicial Member

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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.**

Original Application No. 98/2005

Date of Order: 29th December 2006

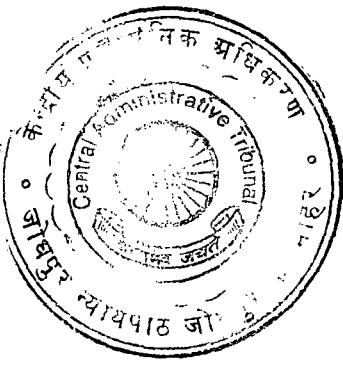
**HON'BLE MR. J K KAUSHIK, JUDICIAL MEMBER.
HON'BLE MR. R.R. BHANDARI, ADMINISTRATIVE MEMBER.**

1. K.C. Vyas, S/o Late Shri Suck Chand aged about 44 years, r/o Sector No. 18/444, Choupasni Housing Board, Jodhpur. Presently working on the Post of UDC in the Office of Station Dte. All India Radio, Jodhpur.
2. R.G. Arora, S/o Late Shri Chaturbhuj Arora aged about 45 years, r/o Rajdadiji Ka Nohra, Post Office Building, Kabootaron Ka Chowk, Jodhpur. Presently working on the Post of UDC in the Office of Station Dte. All India Radio, Jodhpur.
3. O S Sisodia, S/o Late Shri Gokul Singh Ji aged about 45 years, r/o Makrana Mohalla, Pipli Ki Gali, Jodhpur. Presently working on the Post of UDC in the Office of Station Dte. All India Radio, Jodhpur.

: Applicants.

Rep. by Mr. S.K. Malik & Mr. Dayaram: Counsel for the applicants.

VERSUS



1. Union of India, through the Secretary Ministry of Information & Broadcasting Mandi House, New Delhi.
2. Chief Executive Officer, Prasar Bharti, Information and Broadcasting Corporation of India, Mandi House, New Delhi.
3. Director General, All India Radio, Akashwani Bhawan, Parliament Street, New Delhi.
4. Station Director, All India Radio, Jaipur. (Rajasthan)
5. Vijay Kumar Duggal S/o Late Sh Rajendra Nath, aged about 45 years, By caste Duggal, Punjabi Khatri, r/o 1/110, Goverdhan Vilas, Udaipur. Presently working as UDC at Akashwani, Udaipur reverted from the post of Accountant at DMC, Bhilwara.
6. Bal Kishan Panwar, S/o Shri Gulab Chand Panwar, aged about 44 years, resident of Jodhpur, presently working as Accountant at Akashwani, Suratgarh.

: Respondents

Rep. by. Mr. M. Prajapat & Mr. Ravi Bhansali: Counsel for the respondents. 1 to 4

Mr. Manoj Bhandari: Counsel for the respondents 5 & 6

ORDER

Per Mr. J K Kaushik, Judicial Member.

Shri K C Vyas, R G Arora and O S Sisodia have preferred this joint Original Application under section 19 of A T Act 1985 and have prayed for the following reliefs:

" (a) by an appropriate writ, order or direction respondents may be directed to allow the same relief as have been extended to identical circumstances persons in view of the judgement dated 19.09.2002 in O.A. No. 257/2001, Shri K.P. Bissa & Ors vs. UOI and ors. and judgement dated 09 Jul. 1993 in O.A. No. 3/89 Dilip Kumar & Ors. vs. UOI and ors. and Judgement dated 21. Oct. 1994 in O.A No.838/89 Asha Vadhvani vs., UOI and ors and the applicants also be regularised from the date of their initial entry into service with all consequential benefits.

(b) Any other relief which is found just and proper, may be passed in favour of the applicants in the interest of justice."

2. We have heard elaborate arguments advanced at the bar by all the learned counsel representing the contesting parties and also perused the pleadings as well records of this case.
3. The factual background of this case may be succinctly summarised in few words. All the applicants were initially appointed to the post of Clerk Gr.II in the pay scale of Rs. 260-400 (Known as C.G-II) on 29.08.79, 08.08.80 and 06.12.80 respectively, on adhoc basis. Their names were sponsored through the employment exchange and a duly constituted selection committee held the selection wherein all the applicants were found successful. Thereafter, they were appointed on ad



hoc basis as mentioned above. As per the Recruitment Rules, the recruitment for the post of CG II is to be done through the Staff Selection Commission (SSC for short). The vacancies are intimated to the SSC for nomination of qualified candidates. In the instant case the SSC could not provide the qualified candidates and some persons including the applicant were appointed on adhoc basis with the approval of SSC in order to run the stations smoothly. The appointment letters contain specific riders/conditions namely, one cannot be appointed on regular basis till his name is sponsored by SSC, can be terminated without notice or disclosing reasons, will not confer any right for regular appointment, ad hoc period shall not count for seniority etc. Subsequently they were subjected to a special examination conducted by the SSC in the year 1982/1983 for the post of CG II in which all the applicants qualified. They were therefore regularised as C.G. II with effect from 21.04.82, 22.08.82 and 30.06.1983 respectively. Their seniority was also fixed as per the directions of SSC/DOP & AR. They have been further promoted to the post of C.G. I/UDC in the pay scale of Rs. 1200-2040 with effect from 31.07.85, 17.06.89 and 30.07.90, respectively. The matter relating to regularisation on the post of CG II with effect from the date of initial entry was taken up by the respondent No. 4 to the respondent No. 3 on the basis of the regularisation in respect of other similarly situated persons who filed the cases before this very Bench of the Tribunal, but no decision has been taken. Numerous grounds



have been enumerated which we shall examine in the later part of this order.

4. As regards the variances in facts, the official respondents as well as the private respondents have taken certain preliminary objections in their replies. One of the preliminary objections is that this Original Application is time barred in as much as the applicants were regularised about two decades back and they did not represent at any time. They have already been promoted to the next higher grade and if the adhoc period is treated as regular several review DPCs may have to be conducted as the entire seniority list will have to be revised. It may open the flood gates for persons adversely affected. The applicants are now estopped from claiming regularisation from the date of their entry since they have not made any specific challenge soon after their adhoc appointment was regularised. The facts of cases of Shri D K Jain, Radha Mohan and Asha Vadwani are different in nature and there is no question of any discrimination. It is averred in the reply of private respondents that Respondent No. 5 was directly recruited as CG-II/LDC dated 18.3.1981 on probation after passing the requisite examination conducted by SSC and has been assigned consequent seniority and other benefits. If the applicants in this OA are given the benefits of their ad hoc service, they may become senior to the private respondents having a march over the regular and substantive appointees.



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5. The learned counsel for the applicants has vociferously submitted that the applicants are similarly situated persons to those who have gone into litigation and enjoyed the due benefits but the applicants have not been granted the same. They have been visited with hostile discrimination and their action is in violation of Article 14 of the Constitution. After due selection, they were appointed to the post of CG-II on ad hoc basis which was followed by regularisation on the same post without any interruption. They are entitled to count the period of their ad hoc service towards their seniority. As regards the delay, he has submitted that similarly situated persons have been granted the said benefits only vide order dated 04.10.2004, giving rise to a cause of action and immediately thereafter this OA has been filed on dated 31.3.2005. The same is very much within limitation. Further he has cited numerous judgements in support of his contentions relating to the limitation as well as merits of this case, which we shall deal with in the later part of this order. He has next contended that limitation would not come in the way since the similarly situated persons have already enjoyed the due benefits and on the same principles the applicants should also be extended the same. As a matter of fact the respondents should have extended the due benefits to the applicants in particular and other similarly situated persons in general without dragging to the court of law. This court made a specific query as to when for the first time the applicants took up their matter with the respondents. No satisfactory reply was forthcoming and

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he only referred to certain internal/official correspondences amongst the respondents.

6. Per contra, the learned counsel for the official and private respondents have reiterated the grounds of defence as set out in their respective replies. They have stressed hard on the preliminary objection of limitation. It was also submitted that the applicants have not filed any application for condonation of delay despite the fact that the basic claim relates to the year 1983 and this OA is filed on 31.03.2005. They very well knew the conditions of their appointment, i.e. the adhoc appointment will not count for seniority and also will not confer any right to hold the post. They can get the regular appointment only after their names are sponsored by the SSC. Soon after clearing the requisite examination conducted by the SSC they have rightly been given regular appointment and the seniority thereof. The orders of their regular appointment from a prospective date have not been challenged. The applicants have enjoyed numerous benefits on the basis of the same including the next promotion. The position of other candidates especially that of the direct recruits was also settled at the relevant time. The grant of relief to the applicants would result in unsettling the settled position of number of persons who are not before this Court and their seniority and other service conditions shall be adversely affected without having their say in the matter.



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7. Before advertizing to the factual and legal aspect of this case, we would examine the preliminary objection relating to the limitation. Admittedly, the basic claim of the applicants is for counting their period of their adhoc service from 1979/1980 to 1982/1983 on the post CG II towards seniority as well as for other consequential benefits, on their regularisation i.e. by preponing their date of regularisation to the date of their initial appointment as ad hoc. Therefore the initial cause of action to the applicants had arisen in the year 1982/1983. Admittedly, no representation has ever been filed by them in regard to the same, therefore the Original Application ought to have been filed in the year 1983/1984, but the same has been filed on 31.03.2005. Thus as per Sec. 21 of the A.T. Act, 1985, there is a delay of over two decades in filing of the Original Application. Admittedly, no application for condonation of the delay in filing this O.A has been filed.



8. As regards the judgements cited on behalf of the applicants relating to grant of benefits to them on the basis of the benefits granted by this bench of the Tribunal to similarly situated persons is concerned, the position of various such decisions is as under:

1. OA No. 838/89 dated 21.10.1994 *Asha Vadhwan vs. UOI & Ors.* – The case was for seeking regularization from the date of their initial appointments i.e. date of ad hoc appointment. Reliance was placed on the judgements of the Apex court in case of *State of Haryana & Ors. vs. Piara Singh & Ors.* 1992 SCC (L&S) 825 and *HC Putta Swamy vs. Chief Justice of Karnataka High Court – AIR 1991 SC 295 = 1992 SCC (L&S) 53.* This bench of the Tribunal directed to consider their regularization on the post of CG-II from the date of their initial appointments. Both the said judgements of Apex Court have been impliedly overruled by a constitution bench Judgement of the Hon'ble Supreme Court in case of **Secretary to State of Karnataka and Others Vs. Umadevi and Others** reported in (2006) 4 SCC page 1 (para 26), holding that the directions clearly run

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counter to the constitutional scheme. Even in para 50 of the decision in case of **State of Haryana & Ors. vs. Piara Singh & Ors** provides that if and when such person is regularised he should be placed immediately below the last regularly appointed employee in that category, class or service, as the case may be. Therefore, the decision in Asha Vadhwan is to be taken as per incuriam would not be a precedent.

2. **OA No. 3/89 Dilip Kumar vs. UOI & Ors.** dt. 9.7.93 – Termination – for making a way for direct recruit – Principles of natural justice not followed hence order quashed. The said case was totally in different context and decision is not even remotely connected to the instant case. Hence it is of no help to the case of applicants.

3. **K P Bissa and ors Vs. Union of India & Ors** passed on dated 19.9.2002 in OA No. 257/2001- The prayer was for grant of same relief which were extended to identically circumstanced person in view of judgements in **Dilip Kumar vs. UOI & Ors and Asha Vadhwan vs. UOI & Ors.** The respondents were directed to consider the case of applicants therein for regularization from the date of their initial appointments. This decision also meets with the same fate as the decision in case of **Asha Vadhwan** supra.

4. (1988) 6 ATC 609 (CAT) - **Laxman Dass vs. UOI & Ors.** – Limitation – condonation of delay – applicant waiting for outcome of a case and then submitting a representation to the office – Meanwhile limitation period expired – held circumstances justified condonation of delay. Firstly, in the instant case there is no application for condonation of delay where the principles laid down in the said case can be applied. Secondly, we take judicial notice of a decision of Hon'ble Supreme Court in the case of **State of Karnataka & Ors. v. S.M.Kotrayya & Ors.** reported in (1996) 6 SCC 267. In that case the respondents woke up to claim the relief that was granted to their colleagues by the Tribunal with an application to condone the delay. The Tribunal condoned the delay. Therefore, the State approached Apex Court and their Lordships of supreme Court after considering the matter observed as under :

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"Although it is not necessary to give an explanation for the delay which occurred within the period mentioned in sub-section (1) or (2) of Section 21, explanation should be given for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should satisfy itself whether the explanation offered was proper. In the instant case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal was wholly unjustified in condoning the delay."

In the instant case, even the case of Asha Vadhwan supra came to be decided on dated 21.10.1994, but the applicants did not react and filed this OA only on dated 24.12.2004. In view of the above proposition law, though no application for condonation of delay has been filed in this case and even if there had been any application for condonation of delay, the same would have met with a dismal failure.

9. The net result is that this OA is not within limitation as per section 21 of AT Act 1985 and question of condoning of the delay

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does not arise since there is no application to this effect. Now we will advert to the question that if the OA is not within the limitation, what should be the fate of this case? We may point out that this issue does not need elaborate discussion, since the same has been settled by the Apex Court in the case of **Ramesh Chand Sharma v. Udhamp Singh Kamal (2000 (1) ATJ 178 SC)**, wherein, their Lordships have held that the Tribunal was wrong in adjudicating the case relating to promotion on merits once the very OA was not within the limitation and the delay was not condoned. It has been categorically held that unless and until the Original Application is found to be within the limitation or the delay in filing of it is condoned, the Tribunal would not adjudicate the matter on merits. Therefore, the very OA cannot be sustained and we are not required to adjudicate this case on merits.

10. However, keeping view that vital issues of seminal significance are involved in this case, we would like to adjudicate this case on merits also. Primarily two major issues are involved, namely (1). Whether the ad hoc service rendered by the applicants prior to their regular appointment after passing the examination conducted by SSC, should be counted for seniority etc and (2). if the benefits extended to certain persons are not extended to the similarly situated persons, will it tantamount to discrimination?

Admittedly, the post of CG-II is required to be filled in by SSC as per recruitment rules. The applicants were initially

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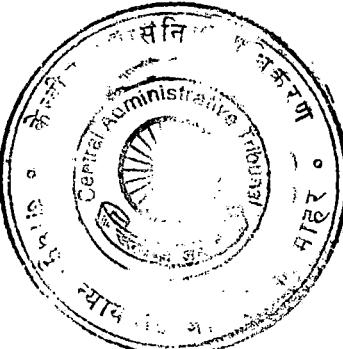
appointed on ad hoc basis after subjecting them to test at departmental level during the year 1979-80. Their names were sponsored through employment exchange. It was specifically mentioned in their appointment letters that they had no vested right to hold the post as well as the ad hoc appointment shall not count for seniority. Steps were taken immediately to arrange for special examination conducted by SSC and after qualifying the same; all the applicants were appointed on regular basis by putting them on probation for two years which they completed satisfactorily. Thereafter, they were extended the due benefits of further promotions by taking date of their regular appointment as date of initial appointment (i.e. without taking the ad hoc service into account). The complete position was acceptable to them without any demur. They seem to have become wiser only when some official correspondences were exchanged between various authorities and also from some orders passed in respect of persons who went into litigations. When the applicants were holding the post of CG-II on ad hoc basis, some persons like private respondents were appointed on regular basis after qualifying the examination conducted by SSC in the earlier selection to that of applicants and have been enjoying due benefits according to date of their regular appointments and also placed above the applicants in the seniority lists ever since their appointments.

11. Now we would advert to the legal facet of the issue. The law on this point is well settled now. The regularization should

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normally be from a prospective date and that too keeping in view the vacancy position and reservation roster. The regularization can be made only in accordance with a specific scheme. In the instant case there was no scheme of regularization as such and the word regularization used is a misnomer and the respondents rightly used the word 'xyz presently working on ad hoc basis is appointed in the temporary officiating capacity on regular basis to the post of CG-II' w.e.f. (date of passing the test conducted by SSC). It is thus not a case of regularization at all. The Apex Court in a constitution Bench Judgement in case of **Secretary to State of Karnataka and Others Vs. Umadevi and Others reported in (2006) 4 SCC page 1**, have settled the law on regularization. It has been held that any appointments made on contract, ad hoc, casual, for fixed term basis etc. i.e. de hors of the rules, cannot be regularized. The ad hoc service, rendered on appointment de hors of the rules, cannot count for seniority. Otherwise also one selected earlier shall rank senior to the one selected later, is the general rule. We also find support of this proposition of law from the verdicts of Apex court mentioned in the succeeding paras.



12. In **Direct Recruit Class II Engineering Officers Association versus State of Maharashtra and others (1990) 2 SCC 715=AIR 1990 SC 1607**, the Constitution Bench held that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The law was

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summed up in the form of eleven propositions. It is sufficient to refer to the first one of them, which is in the following terms:

"44. To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that **where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.**" (emphasis ours)

13. We also find support of the same from a very recent decision of Apex Court in case of **Mohammed Israils & ors Vs. State of West Bengal and others 2002 (3) SLJ 80 SC**

wherein their Lordships have held that the service rendered on ad hoc basis which was subject to approval by the Public Service Commission can not count for seniority till such approval is given. In that case the promotion was made on ad hoc basis for six months in 1980 subject to approval of Public service commission but PSC approved only in the year 1988. It was held that ad hoc promotion was against rules so any service prior to 1988 cannot count as regular one and therefore the same cannot count for seniority. In other words one can get seniority only from the date he fulfils all the eligibility conditions.

 In case of **State of Haryana & Ors. vs. Piara Singh & Ors. 1992 SCC (L&S) 825 Para 50** (though overruled on other points as indicated above), it has been laid down that if and when such ad hoc/causal labour is regularised, he should be placed immediately below the last regularly appointed employee in that category, class or service, as the case may be.



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14. We may assert that this bench of the Tribunal in cases cited by the learned counsel for the applicants, did not lay down any principle for counting the ad hoc period of service towards seniority or to make them regular from the date of ad hoc appointment and whatever benefits were extended to certain persons, were extended by the respondents themselves. If at all any law was laid down, it was per incuriam as explained above while dealing the point of limitation with reference to the case of **Asha Vadhwani** supra. Therefore, the first issue is answered in negative.

15. Now turning to the second issue i.e. if the benefits extended to certain persons are not extended to the similarly situated persons, will it tantamount to discrimination? The principles of law of discrimination has been lucidly laid down by the Apex court in case of **National Institute of Technology Jamshedpur & Ors Vs. Chandra Shekhar Chaudhary** [2006 (8) Supreme page 842] and contents of relevant paras are reproduced as under:

"9. In State of Haryana & Ors vs. Ram Kumar Mann [1997 (3) SCC 321] this Court observed:

"The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them i.e. benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing misappropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can similarly circumstanced persons claim equality under Sec. 14 for Reinstatement? The answer is obviously "No".

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10. In a converse case, in the first instance, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right". [See: State of Bihar and others vs. Kameshwar Prasad Singh and Another [(2006) 9 SCC 94, Vikrama Shama Shetty vs. State of Maharashtra and Ors. (2006) (6) SCC 70) South Eastern Coalfields Ltd. vs. Prem Kumar Sharma and Ors. (2006 (7) SCALE 240) Ekta Shakti Foundation vs. Government of NCT of Delhi (JT 2006 (6) SC 500)."]

16. Applying the aforesaid proposition of law, we are not persuaded that the applicants have been able to show any enforceable right in their favour. Therefore, there has been no infraction of Article 14 of the constitution in the case of the applicants. The cases cited i.e. **Miss Shirely S. Chauhan & Ors. vs. Union of India & Ors.** 8/2004 SwamyNews 91, 2006(2) SCC 747 - **State of Karnataka & Ors. vs. C. Lalita (B)**, (1997) 6 SCC 721 - **K. C. Sharma & Ors. vs. UOI & Ors.**, (1997) 2 SCC 1 (FB) **Aswani Kumar & Ors. vs. State of Bihar & Ors. (F)**, (1997) 10 SCC 663 (A) - **Union of India & Anr. Vs. P. Sathi Kumarana Nair & Ors.** (2004) 3 ATJ 255 (CAT) **Man Singh vs. Union of India & Ors.**, 1985 (2) SLR 248 (SC) **Inder Pal Yadav & Ors. vs. Union of India & Ors.**, DBC Spl. Appeal No. 90/2004 **Dr. Sneh Saiwal vs. State of Rajasthan** decided on 01.06.2004, **Kamaljeet Singh vs. UOI & Ors.** decided by Jodhpur Bench of the Tribunal in OA No. 221/2004 dated 5.9.2006 and relied upon on behalf of the applicants are of no help to them. The second issue is also decided in negative and against the applicants.



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17. Looking the matter from yet another angle, even as per the theme of similarly situated persons, one cannot get any benefit at a belated stage, of a judgement which lays down the principle of law and this proposition has been propounded by the Apex court in case of **Chairman, U.P.Jal Nigam & Anr. Vs. Jaswant Singh & Anr.**, Appeal (civil) 4790 of 2006 decided on *JT 2006 (10) SC 500* dated 10.11.2006. Their Lordships of Supreme Court have observed as under:

"In view of the statement of law as summarized above, the respondents are guilty since the respondents has acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted."

18. In view of what has been said and discussed above and the legal position crystallised, we reach to an irresistible conclusion that this Original Application is hit by law of limitation as well as devoid of any merit or substance. The same stands dismissed, accordingly. However, all the parties are directed to bear their respective costs.


R R Bhandari
 (R R BHANDARI)
 ADMINISTRATIVE MEMBER

J K Kaushik
 (J K KAUSHIK)
 JUDICIAL MEMBER

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