CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.75/2010,82/2010 & 196/2010

Friday this, the 12th day of August, 2011

CORAM:
HON'BLE MR.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE MR.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER
HON'BLE MR.V.AJAY KUMAR,JUDICIAL MEMBER

O.A.No.75/2010

1. Smt. K.U.Sobhana, UDC,
Regional Passport Office, Cochin,
Residing at Quarter No.2/18,Passport Office Quarters,
Perumanoor, Cochin-682 015.

2. Smt.Daisy Jose, UDC,
Regional Passport Office, Cochin,
Residing at Quarter No.3/8, Passport Office Quarters,
Perumanoor, Cochin-682 015.

3. Smt.Rajalekshmi Balachandran, Assistant,
Regional Passport Office, Cochin,
Residing at Arikkathil Lakshmi Nivas,
Kureekad P.O.,Ernakulam District-682 304.

4. K.Muraleedharan Pillay,Assistant,
Regional Passport Office, Cochin,
Residing at Quarter No.3/12, Passport Office Quarters,
Perumanoor, Cochin-682 025. .. Applicants

By Advocate: Mr.Shafik M.A.

vs.

1. Union of India represented by the
Secretary to the Government of India,
Ministry of External Affairs,
New Delhi.

2.The Chief Passport Officer & Joint Secretary(CPV)
Ministry of External Affairs,
New Delhi.

3. The Under Secretary(PV)
Ministry of External Affairs,
New Delhi.

4. Padmakumar C.K., aged 43 years,
S/o Chellappan Pillai,
Assistant, Passport Office, Trivandrum,
Residing at :House No.141'C,SCTNRA,
Chalakuzhy Lane, Pattom P.O.
Trivandrum,Kerala State, Pin-695004.

5. Anoop Asokan, aged 43 years,
S/o K.Asokan,
Assistant, Passport Office, Trivandrum,
Residing at :"Ajantha", Mayyanad P.O.,
Kollam, Kerala State, Pin-691 303.

6. Preetha K.B., aged 37 years,
W/o B.Ratheesh,
Assistant, Passport Office,
Residing at:PNRA G-30,
Nandanam, Pranavam Gardens,
Mannanthala P.O., Trivandrum. .. Respondents

By Advocate Mr. M.K.Aboobacker, ACGSC

O.A.No.82/2010

1. C.V.Vijayalakshmi,
U.D.Clerk,
Passport Office, Ernakulam.
2. C.C.Mani,
L.D.Clerk,
Passport Office, Ernakulam.

3. K.A.Sarojani,
L.D.Clerk,
Passport Office, Ernakulam.

4. T.M.Vasanthakumari,
L.D.Clerk,
Passport Office, Ernakulam.

5. K.R.Reena, L.D.Clerk,
Passport Office, Ernakulam.

6. N.M.Suhara Beevi, L.D.Clerk,
Passport Office, Ernakulam.

7. K.M.Ponnu, L.D.Clerk,

Passport Office, Ernakulam.

8. P.K.Sudharma, L.D.Clerk,
Passport Office, Ernakulam. .. Applicants

By Advocate :Sri P.Santhosh Kumar

vs.

1. Union of India represented by the Secretary,
Ministry of External Affairs,
Government of India,
New Delhi.

2. Joint Secretary(C.P.V) and
Chief Passport Officer, Ministry of External Affairs,
New Delhi.

3. Regional Passport Officer, Cochin.

4. Padmakumar K.C., aged 43 years
S/o Chellappan Pillai,
Assistant,Passport Office, Trivandrum
Residing at:House No. 141 C,
Chalakuzhy Lane, Pattam P.O.,
Trivandrum, Kerala State, Pin:695 004.

5. Anoop Asokan, aged 43 years,
S/o K.Asokan,
Assistant, Passport Office, Trivandrum,
Residing at Ajantha, Mayyanad P.O.,
Kollam, Kerala State, Pin-691303.

6. Preetha K.B., aged 37 years,
W/o B.Ratheesh,
Assistant, Passport Office, Trivandrum,
Residing at :PNRA G-30,
Nandanam, Pranavam Gardens,
Mannanthala P.O., Trivandrum. ... Respondents

By Advocate: Mrs. Deepthi Mary Varghese, ACGSC
Mr.T.C.Govindaswamy(R4-6)

O.A.No.196/2010

1. M.C.Das,
Superintendent,
Passport Office, Malappuram,
Residing at Sisiram, N.P.Road,
Chevarambalam P.O., Calicut.

2. K.M.Chandran,
Assistant,
Passport Office, Kaithamukku, Trivandrum,
Residing at TC No.29/1695(MRA-28), Plancherry North,
Plancherry Lane, Punnappuram, Vallakkadavu P.O.
Trivandrum.

3. G.Maria Sebastian,
Assistant,
Passport Office, Trivandrum,
Residing at No.5-38-B North Street,
Neyyore P.O. Kanyakumari District,
Tamil Nadu. ,,Applicants

By Advocate :Sri T.C.G.Swamy

vs.

1. Union of India represented by the
Secretary to the Government of India,
Ministry of External Affairs,
New Delhi-110 001.

2. The Deputy Secretary(PVA)
Office of the Chief Passport Officer,
Ministry of External Affairs,
New Delhi-110 001.

3. The Chief Passport Officer & Joint Secretary(CPV)
Ministry of External Affairs,
New Delhi-110 001.

4. Smt.P.Sudhabai, Assistant
Passport Office, Trivandrum.

5. Smt. Indu Nair, Assistant,
Passport Office, Trivandrum.

6. Smt V.Anitha, UDC,
Passport Office, Trivandrum. .. Respondents

By Advocate: Sri Sunil Jacob Jose, SCGSC(R1-3)
Sri Shafik M.A(R4)

The Application having been heard on 18.07.2011, the Tribunal on 12.8.11 delivered the following:

ORDER

HON'BLE MR.JUSTICE P.R.RAMAN,JUDICIAL MEMBER:

All the above O.As came before us, on a reference made by the Division Bench, finding that the order in O.A.82/08 is in conflict with the order in O.A.1557/9, on the question as to whether the casual employees subsequently regularized are entitled for seniority reckoned from the date of their initial appointment or not.

2. The applicants in O.A.196/10 are presently working as Superintendents/Assistants in different Passport Offices in Kerala. They were aggrieved by the order dated 08.12.2009 issued by the 2nd

respondent by which respondents 4,5 and 6 were assigned seniority from the dates of their engagement as casual employees. The order dated 08.12.2009 is produced and marked as Annexure A1 in O.A.196/10. The said order was seen issued pursuant to the common order rendered by this Tribunal dated 09.10.2008 in O.A.297/08, 299/08 and 300/08.The applicants are initially appointed under the official respondents 1 to 3 as LDCs on 28.08.1982, 16.06.1982 and 25.09.1982 respectively. They were promoted as UDC on 25.9.92,15.12.94 and 21.6.96 and thereafter as Assistants on 17.10.2001, 10.9.02 and 16.2.04. The first applicant was further promoted as Superintendent and he is presently working in that capacity. All the applicants were appointed through the Staff Selection Commission by direct recruitment and they have been working in that department since then with seniority assigned to them from the date of their initial appointment. The 4th respondent joined as a casual clerk/daily rated employee on 19.3.82 and she was regularized as LDC on 12.6.1985 and was subsequently promoted as UDC on 1.11.1989. She is yet to be promoted as Assistant. The 5th respondent also joined as casual employee on 2.9.1983 whose services were regularized on 17.6.1985 and subsequently promoted as UDC on 19.10.2001 and subsequently promoted as Assistant on 31.10.2001. The 6th respondent joined the services of the department as a casual employee on 3.8.1992 and was regularised as LDC on 26.12.1994 and was promoted as UDC on 26.2.2004 and as Assistant on 12.12.2008.

3. In the case of the applicants in O.A 75/2010 the first applicant got

promotion as LDC on 6.10.1994 and as UDC on 21.01.2003. The second applicant got promotion as LDC on 6.10.1994. The third applicant was appointed as a casual clerk/daily rated employee on 17.04.1990, promoted as LDC on 6.10.1994 and as UDC on 5.10.06 and as Assistant on 12.12.08.The 4th applicant joined the services as casual employee on 23.07.1990, promoted as LDC on 6.10.1994 and as UDC on 5.10.2006 and as Assistant on 12.12.2008.

4. The applicants in O.A. 82/10 joined the service as casual clerk/ daily rated employee on different dates, the applicants No.1 to 4 on 25.09.1989, the 5th applicant on 18.4.90, the 6th applicant on 22.5.90, the 7th and 8th applicant as casual employee on 25.9.1989. All of them were later regularised as LDCs on 22.04.1997 and promoted as UDC on 27.11.2008.. The party respondents in O.A. 82/2010 joined the service as LDC, K.C.Padmakumar and Anoop Asokan on 8.2.93 and K.B.Preetha on 24.2.93. All of them were promoted as UDC on 19.10.2001 and as Assistants on 31.10.2008.

5. The applicants in the common judgment rendered in O.A. Nos.297/2008, 299/2008 and 300/2008, a copy of which is produced as Annexure A3, are respondents in O.A. No.196/10. As stated earlier, they entered the service as casual employees and they were later regularized as LDCs. The daily rated casual employees were regularized as and when the vacancies were created based on a qualifying examination held by the Department. Claiming that they are entitled to be regularized with retrospective effect from the date on which they

entered service as casual employees and claiming parity of treatment with similarly situated persons, they approached this Tribunal by filing O.A. 297/2008 and connected cases. This Tribunal as per Annexure A3 judgment allowed the O.A. and declared that the applicants are entitled to the very same benefits as are available to those similarly situated persons in O.A.Nos.82/2008 etc. and they be regularized in the grade of LDC from the date of their initial engagement on daily rated basis and further declared that they are entitled for consequential seniority. They were given notional monetary benefit, but held entitled to grant of A.C.P reckoning the period of regular service from the date of regularization and also for higher promotion based on their revised seniority, if they are otherwise entitled to for such higher promotion. The applicants in O.A.196/10 were not made parties in those O.As. Inter alia contending that by giving retrospective seniority from the date of initial appointment as casual employees, to the party respondents by Annexure A3 order, their vested right of seniority accrued to them were adversely affected and they being not made parties in Annexure A3, cannot bind them. They contend that retrospective seniority granted to respondents 4 to 7 (applicants in A3 order) after relaxing the procedure for selection illegal and arbitrary and seek to quash Annexure A1 order dated 8th December,2009 issued by the Government of India, Ministry of External Affairs, by which their services were regularized in the grade of LDC from the date of their initial engagement on daily rated basis with consequential seniority. It is also prayed to declare that the respondents 4 to 6 are not entitled to seniority from the date of their initial engagement on daily rated basis.

6. The applicants in .O.A.No.75/10 has approached this Tribunal against the refusal of the official respondents in refixing their seniority and pay and other benefits with effect from the date of initial entry as daily rated clerks. They entered the services as casual employees on different dates and were regularized with effect from 6.10.1994 after they qualified in the test conducted by the Staff Selection Commission on behalf of the Department. They were also given subsequent promotions. But in the seniority list issued by the department as on 1.4.2007, their date of entry was shown as 6.10.1994, that is the date on which they were regularized pursuant to the qualifying test. In Annexure A1 order produced in that case which is issued by the Government of India reference is made to the order passed by this Tribunal in O.A.1557/98 and O.A. 436/05 dated 13.06.2005.The applicants are aggrieved because they were given seniority only prospectively and not from the date of their initial engagement as casual employees. They seek for appropriate declaration for reckoning their seniority as LDC from the dates of their initial appointment on par with similarly situated employees. It is pointed out by the respondents that even though Annexure A1 was issued as early as on 23.09.2005, the applicants chose to challenge the same only in 2010. The party respondents in O.A. 75/10 are the applicants in O.A. 196/10.

7. In O.A.82/2010, the applicants are presently working as UDC in the Passport Office, Kochi. They entered the service as casual employees and subsequently regularised as LDC. Here also they were regularised

as per Annexure A1 dated 20.10.1997 with effect from 22.04.1997. By Annexure A2 order dated 6th October, 2005 issued by the Government of India, Ministry of External Affairs(CPV Division),New Delhi, the first applicant was held entitled to all consequential benefits such as notional fixation of pay, eligibility to appear in any test or examination if held for promotion to the next higher grade, counting of qualifying service for terminal benefits from 25.09.1989 except seniority in the grade of LDC which will be counted from 22.04.1997. It is contended that the other applicants were also issued with similar orders. They are aggrieved by the non-consideration of their case for retrospective seniority from the date of their initial engagement as casual employees and they seek parity of treatment as in the case of the applicants in Annexure A3 judgment rendered in O.A.297/2008 and connected matters. Incidentally it may be noticed that in Annexure A2 order issued by the Government of India, Ministry of External Affairs, reference was made to the judgment in O.A.1557/98 and O.A.436/2005 rendered by this Tribunal.

8. Going by the facts as stated in the judgment in O.A. 1557/1998, the applicants were casual labourers appointed on different dates in the Regional Passport Office, Kozhikode. They approached this Tribunal by filing O.A. 1037/91 and 1333/91 seeking regularization of their services. The Tribunal had directed by an order passed in those O.As to the official respondents to regularize their services as Lower Division Clerks with effect from the date of initial appointment on casual basis, in case they are successful in the departmental examination held in the same manner as the one held in the year 1985. It is seen from the facts as stated in

Annexure A4 judgment that a departmental test was conducted for the purpose of regularizing the casual employees in the year 1985 and in 1993.Some of these casual employees could not participate in the test and some directions were issued in O.A.3/94 for conducting a written test for the applicants in O.A.3/94 including earlier O.As 1037/01 and 1333/91 within a prescribed period. The directions issued by the Tribunal became final on the dismissal of the SLP against the order of the Tribunal in OA 3/94 by the Apex Court. The examination was held on 15.01.97 and the applicants in O.A.1557/1998 were among those who were successful. But their services were regularized with effect from 22/23.4.1997 by order dated 10.4.97, presumably because the test itself was held for the purpose of regularizing their services and they became qualified to be regularized by the successful pass in the examination. But the applicants were not satisfied with the same and they wanted regularization with retrospective effect from the date of initial engagement as casual employees. The Tribunal by its order dated 20th April, 2001 in O.A. 1557/98 directed the respondents to consider the matter afresh after setting aside the order impugned therein as Annexure A8 and directed to pass appropriate orders. The Union of India challenged the orders of the Tribunal before the Hon'ble High Court of Kerala. Some of the direct recruits who were appointed on a regular basis who were regularized prior to the regularization of the applicants being persons aggrieved by th Tribunal's order had also approached the Hon'ble High Court by filing Writ Petition, which was disposed of by a common order rendered on 25.02.2002 directing a fresh decision by the Tribunal after hearing the contentions of all persons whose seniority would be

adversely affected in case the seniority is granted to the applicants in O.A 1557/98 from the date of their initial engagement on casual labourers. The party respondents 4 to 43 therein got impleaded and contested the matter inter alia contending that their settled seniority cannot be upset by granting the same to the applicants therein, even before a date on which they entered the grade and granting such seniority to the casual service is not an accepted principle of service jurisprudence. The Tribunal raised an issue as to "whether the applicants in this case are entitled to be regularized with effect from the date of initial engagement as casual labourers as Lower Division Clerks and also for seniority as LDCs with effect from those dates?". The question was answered by the Tribunal in the following manner:-

> "On a careful examination of the facts and circumstances in the light of the rules and instructions and principles governing seniority in the grade, we find that the claim of the applicants for seniority for the service rendered by them as Casual Labourers is not sustainable. It is well settled now that in the absence of any rules to the contrary, seniority will depend on the length of service after regular entry into the cadre/grade. In this case, the applicants were after holding the departmental qualifying examination regularized as LDC, they were retained in service as casual labourers.The services of casual labourers would not count for seniority as against persons who had been regularly recruited as LDCs while the applicants were only casual labourers. However, even if the applicants are not entitled to count their seniority with effect from the date of their initial engagement as casual labourers, are they not entitled to have their entry in the light of the direction contained in Annexure A-1 judgment?It was answered as follows:
>
> "We are of the considered view that the answer to this question can only be in the affirmative. The Tribunal in its judgment (Annexure A-1) at paragraph 26 has rejected the contentions of the respondents that the applicants are not entitled for regularization with effect from the date of original appointment. It was held that there were accrued rights in favour of the applicants for their regularization because their services from 1989 has been admitted by the respondents. In para 36 of the judgment (Annexure A-1) the Bench held that the applicants were entitled to be regularized as LDCs with effect from their date of original

> appointment if they are successful in the departmental examination as contemplated in the letter dated 01.06.1985. The respondents were directed to conduct an examination in the same manner as the one conducted on 24.08.1985 and were directed to regularize the services of the applicants if they qualify. The judgment has become final as the SLP filed against it was dismissed. The examination was held in 1997 and the applicants undisputedly qualified..... But the regularization given to them with effect from the date of their initial engagement would not confer on them the benefit of seniority because they became members of the cadre only after they were appointed against posts in the year 1997. Other than seniority, the rest of the benefits like treating the period after their initial entry as casual labourers as regular service for the purpose of qualifying service for pension, eligibility for appearing in tests for further promotion, fixation of pay etc. would be admissible to the applicants."

By the penultimate paragraph in the said judgment, the claim of the applicants for seniority above respondents 4 to 43 with effect from the date of initial engagement as casual labourers, was rejected, but declared that the applicants are entitled to have their services regularized as LDC with effect from their initial engagement as casual employees in view of the judgment of the Tribunal in O.A. 1037/91 and connected case and directed the official respondents to grant the applicants the benefit of regularization from the initial date of their engagement for all purposes other than seniority i.e., eligibility to appear in the promotion tests and for terminal benefits etc. Annexure A-8 to the extent it was contrary to what has been stated in the judgment, was set aside and this order became final. This was followed by the subsequent decision rendered in O.A. 758/07 and O.A.32/08 as per common order rendered on 15th January, 2009.Reference was made to the operative portion of the order in O.A.1557/98 in para-4 thereof. In para-16, it was held as follows:-

> " In the facts and circumstances, we allow these O.As and set aside Annexure A-10 and Annexure A-11 Memoranda in O.A.758/07 and the Annexure A-27 circular dated 23.10.2007 in

> O.A. 32/08. We direct the respondents to implement their Annexure A-5 order dated 5.12.2006 and Annexure A-6 to Annexure A-24 and Annexure A-26 order dated 6.12.2006 and Annexure A-25 order dated 8.5.2006 in O.A.32/08. The respondents shall notionally fix the pay of the applicants in the cadre of L.D.C. with effect from the respective dates of their initial engagement as daily rated clerks and count the period of promotion, higher grades and qualifying service for terminal benefits except seniority in the grade of L.D.C. And to grant all consequential benefits including arrears of pay.(emphasis supplied

However in the subsequent decision in O.A 49/08 rendered on the 27th August,2008, it was held in para-12 as follows:-

> " In view of the above, all the O.As are allowed to the extent as specified hereinafter. It is declared that the applicants are entitled to the very same benefits as available to those similarly situated persons, vide O.A. Nos.82/2008 etc., referred to above, Thus, regularization of the applicants's service in the grade of LDC shall be with effect from 03.08.1992, 02.09.1983 and 19.03.1982 (respectively of applicants in OA 297/08, 299/08 and 300/08) i.e. the date of their initial engagement on daily rated basis and they are entitled to consequential seniority. However, as in the other case, they would be entitled to notional fixation of pay without any monetary benefits."(emphasis supplied)

In para-3 of the order the contentions raised by the official respondents placing reliance on the orders passed by the Tribunal in O.A.1558/97 and in O.A.436/2005 dated 13.6.3005 was noticed, but it was contended on behalf of the applicants therein that RA No.12/2008 in which the Tribunal had in an identical situation took the view that similarly situated persons having been granted seniority from the date of initial appointment as daily rated clerks, there is no reason to deprive the applicant to have the same benefits taking view that similarly situated employees cannot be discriminated in the matter of grant of relief, extended the benefit and allowed O.A.49/2008. Subsequently in the common judgment in O.A.Nos.297/2008, 299/2008 and 300/2008 dated

the 9th December, 2008 the applicants specifically contended that in similarly situated cases in 49/08 and 657/08 read with RA No.12/08 and in a latest decision in O.A.No.82/08 the Tribunal had considered the very same issue and allowed the O.As and hence similar reliefs be granted in these cases also. In para-6 it was held:-

> " Arguments were heard and documents perused. Service records produced by the respondents have also been gone through. Admittedly, others similarly situated have all been granted regularization from the date of their initial engagement as daily rated LDCs and the consequential benefit including seniority granted. Fixation of pay, however, was on notional basis. The question is whether the same treatment should be extended to the applicants in these O;.As."

9. The contentions of the respondents placing reliance on the order of the C.A.T in O.A.No.1557/1998 and O.A. No.436/2005 and contentions based on Umadevi's case was also referred to. The Tribunal taking the view that the decision taken in one specific case should be applied to all other identical situation as recommended by the V Central Pay Commission, proceeded to hold that in view of the order in O.A.No.82/2008 and the conferment of the benefit to similarly situated persons, it was directed that they are entitled to be regularized from the date of their initial appointment on daily rated basis and they are entitled to consequential seniority. Thus, we find that in O.A.Nos.297/2008,299/2008 and 300/2008, the Tribunal was extending the same benefit as was granted to the applicants in O.A.49/2008 and other cases including O.A.No.82/08, but did not follow the decision of this Tribunal rendered in O.A.No.1557/98 and O.A.No.436/05 which was the earliest in point of time and a binding precedent. The only decision where we find that the issue as to whether daily rated employees

regularized with effect from their initial appointment are also entitled for seniority was raised and considered as a specific issue only in the judgment in the common order in O.A.No.1557/98 and O.A.No.436/05. It has not been brought to our notice by either side of any decisions rendered by this Tribunal wherein the question as to whether the casual employees are entitled for seniority over the regularly recruited employees, was considered with reference to the relevant provisions of law. Thus, we have resolve the conflict by answering the issue under reference.

10. Ordinarily after the decision rendered in O.A.1557/98 and OA 436/05 if at all the subsequent bench had any doubt on the correctness of the view expressed in O.A.1557/98 it could have only referred the issue for a decision by the Larger Bench. Since the decision in O.A.1557/98 is a binding precedent, a different view could not have been taken by a subsequent co-ordinate Bench. "Adherence to judicial discipline by following binding precedents is a sine qua non for sustaining the system", **Official Liquidator v. Dayanand;2008(4) KLT SN 67 SC**. In **Safiya Bee v.Mohd.Vajahath Hussain,(2011)2 SCC 94,** the Hon'ble Supreme Court has held that "In case of doubt or disagreement about the decision of the earlier Bench, the well accepted and desirable practice is that the later Bench would refer the case to a larger Bench. The principles and norms stated with reference to the Supreme Court are equally relevant and applicable to the High Court also".

11. Admittedly, before the regular appointments were made through

the Staff Selection Commission by direct recruitment, appointments were made in the Passport Offices on casual basis and those employees continued for a longer period and subsequently in order to regularize their services, an examination was held and based on the result of the examination, the L.D.Cs who were thus working on casual basis,were regularized. The Department regularized their services only from the date of the result of the examination. It was thereafter that the same was challenged and they were directed to be regularized with retrospective effect. But when regularly recruited employees contested the matter on the question of seniority, the issue as to whether the casual employees should be given seniority also over the regularly recruited staff who had been promoted subsequently to next higher position, came up for consideration and the claim for seniority was negatived in O.A.No.1557/98 and OA 436/05.The reason being that the casual employees became members of the cadre only when they were qualified by passing in the examination, but they having continued in the establishment as casual employees from their date of initial appointment, though not regular, was extended the benefit of regularization and other benefits, other than seniority and monetary benefit. It was held that the claim of the applicants in O.A.No.1557/98 for seniority for the service rendered by them as casual labourers is not sustainable as it is settled law that in the absence of any rule to the contrary seniority will depend on the length of service after regular entry in the cadre/grade. We are not told that the position of law as reiterated in the order in O.A.No.1557/98 is in any way incorrect or wrong. It is settled principle in the service jurisprudence that seniority is a civil right which has an

important and vital role to play in one's service career. Further promotion of a Government servant depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum- seniority etc. Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It was held by the Apex Court that the settled seniority position after lapse of several years cannot be unselttled.(see **H.S.Vankani & others vs. State of Gujarat & others; (2010)1 SCC (L&S)1012.**

12. In a recent decision of the Apex Court in **Shiba Shankar Mohapatra and others vs. State of Orissa and Others;(2011) SCC(L&S) 229**,it was held as follows:-

> " Once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In Mudgal case,(1986)4 SCC 531, the Supreme Court has laid down in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation."

In **Sajeeve v.Union of India;2009(4) KLT SN 67(F.B),** a Full Bench of the Hon'ble High Court reiterated the principle that the theory of sit back has been applied almost uniformly in the context of a contention of delay and laches on the part of any person, who makes an attempt to prosecute a claim, which if accepted, would result in a situation where inter se positions which have been settled over the years will have to be revised. In **Uday Pratap Singh & Others vs. State of Bihar and others; 1995 SCC (L&S)85,** the Hon'ble Supreme Court observed as follows:-

" By a catena of decisions of this Court, it is now well-settled that by an executive order the statutory rules cannot be whittled down nor can any retrospective effect be given to such executive order so as to destroy any right which became crystallized. In this connection, it is profitable to refer a decision of this Court in T.R.Kapur v. State of Aryan's,AIR 1987 SC 415,wherein it is held that rules framed under Article 309 of the Constitution cannot affect or impair vested rights, unless it is specifically so provided in the statutory rules concerned.It is obvious that an executive direction stands even on a much weaker footing. It is true, as laid down in Bishan Sarup Gupta v. Union of India,1973 SCC(L&S)1, that effect of upgradation of a post is to make the incumbent occupy the upgraded post with all logical benefits flowing therefrom and can be treated as promoted to the post. Still it cannot be gainsaid that no retrospective effect could be given to any merger of erstwhile lower branch into higher branch in the cadre so as to affect the vested rights of incumbents already occupying posts in the erstwhile higher branch in the cadre. In the present case it has to be kept in view that the contesting respondents were directly recruited and appointed in the Senior Branch on 12.5.1974 and 25.5.1974 respectively, while the appellants were appointed on 2.11.1975 in the merged cadre. It is true that their order of appointment purports to give them appointment retrospectively from 1.4.1974 but such effect cannot be given so as to destroy the seniority rights of the writ petitioners, respondents herein, who were inducted as direct recruits in the Senior Branch prior to 2.11.1975."

13. In **Rabindra Nath Bose and others vs. Union of India and others; AIR 1970 SC 470**, the Apex Court declared that it is settled that Article 13 of the Constitution has no retrospective effect and therefore, any action taken before the commencement of the Constitution in pursuance of the provisions of any law which was a valid law at the time when such action was taken cannot be challenged and the law under which such action was taken cannot be questioned as unconstitutional and void on the score of its infringing the fundamental rights enshrined in Part III of the Constitution. In **Usha Devi v. State of Kerala;2002 (1) KLT 615,** it was observed by the Hon'ble High Court of Kerala that rank list cannot be challenged after it had become final and after a long delay and unsettle the settled position for years.

14. The applicants in O.A.196/10 joined the service on regular basis after following the regular selection process as early as in 1982, subsequently got promoted to the next higher cadre as UDC in 1992,1994 and 1996 respectively and again promoted as Assistants and Superintendents. Thus, by virtue of their seniority which they enjoyed for a long period and having been promoted successfully to the next higher post from time to time, cannot be upset by conferring seniority on the casual employees not regularly recruited after following the same procedure as was applicable to the regular recruitment and to have a march over the regularly recruited employees. Therefore, even though they had been in service as casual employees they are entitled for all the other benefits other than seniority. The casual employees as of right could claim seniority only when they became qualified by successfully passing in the examination. Their retrospective regularization is good enough for all purposes other than seniority. Accordingly, we answer the issue as follows:-

15. The casual employees are entitled to be regularized with effect from their initial engagement and will be entitled for all other consequential benefits other than seniority and monetary benefit.

16. The Division Bench while considering the matter before reference have already held that the O.A. is maintenable. In the circumstances based on the answer as given above we allow this O.A. and quash Annexure A1 to the extent it directed that the party respondents who are the applicants in O.A.Nos. 297,299 & 300 of 2008 are entitled to higher

promotion based on the revised seniority. We declare that the party respondents are not entitled for seniority from the date of their initial engagement as casual employees over the applicants. In the light of the reference answered, we declare that the applicants in O.A. No.75/2010 and O.A.No.82 /2010 are not entitled to claim seniority as LDC with effect from date of their initial entry into the service on casual basis. O.A.No.75/10 is dismissed. As regards the reliefs sought for in O.A No.82/10 is concerned, the reliefs sought for to revise seniority in the category of LDC from the date of initial appointment and to pay the arrears of salary from the date of initial engagement, are dismissed. However, the applicants will be entitled for all other consequential benefits other than seniority and monetary benefits, as was given to the applicants in O.A.No.1557/08, if not already granted.

(V.AJAY KUMAR) MEMBER(J)	(K.GEORGE JOSEPH) MEMBER(A)	(JUSTICE P.R.RAMAN) MEMBER(J)

/njj/