

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Reserved on 09.07.2015.

Pronounced on 29.07.2015.

Original Application No.475/2009

**Hon'ble Mr. Navneet Kumar, Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)**

Rajendra Kumar Anand, aged about 69 years, son of late Shri Kanchi Lal Saxena, resident of H-1/16, Krishnapuram, Kanpur-208007.

-Applicant.

By Advocate: Sri Prashant Kumar Singh.

Versus.

1. Union of India through its Secretary, Ministry of Defence, New Delhi.
2. Engineer-in-Chief, Army H.Q., Kashmir House, New Delhi.
3. Chief Engineer, Central Command, Lucknow Cantt., Lucknow.
4. Sri A.D. Sawley, Flat No.B-2/16, Sadhav Apartment, Near Mahatma Society (Behind Cummins Led Kothurd Phone 411029.
5. Union Public Service Commission, Dholpur House, New Delhi through its Secretary.

-Respondents.

By Advocate: Sri Praveen Kumar holding brief for Sri G.K. Singh for Resp.Nos.1 to 3.

None for Respondent Nos.4 & 5.

Connected with

Original Application No.447/2009

Jagdish Narain Seth, aged about 68 years, son of late Shri Uma Shankar Seth, resident of Napier Road Colony, Part-II, Thakurganj, Lucknow.

-Applicant.

By Advocate: Sri Prashant Kumar Singh.

Versus.

1. Union of India through its Secretary, Ministry of Defence, New Delhi.
2. Engineer-in-Chief, Army H.Q., Kashmir House, New Delhi.
3. Chief Engineer, Central Command, Lucknow Cantt., Lucknow.
4. Sri A.D. Sawley, Flat No.B-2/16, Sadhav Apartment, Near Mahatma Society (Behind Cummins Led Kothurd Phone 411029.
5. Union Public Service Commission, Dholpur House, New Delhi through its Secretary.

-Respondents.

By Advocate: Sri A.K. Mishra for Respondent Nos.1 to 3.

None for Respondent Nos.4 & 5.

O R D E R

By Ms. Jayati Chandra, Member (A)

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, 1985 against the order dated 14.07.2009, whereby case of the applicant's representation seeking correct placement in the seniority list was disallowed. The present OA has been filed for the following relief(s):-

(A). To issue a suitable order or direction setting aside the order dated 14.07.09 issued on behalf of the respondent no.2 contained in Annexure No.1.

(B). To issue a suitable order or direction directing commanding the respondent no.1 to 3 and 5 to reconsider the matter of the petitioner for promotion and to promote him on the post of Assistant Surveyor of Works, Surveyor of Works and Superintending Surveyor of Works with all consequential benefits from the date the respondent no.4 had been promoted.

(C). To issue a suitable order or direction directing commanding the respondent no.1 to 3 and 5 to grant all other consequential benefits as had been made admissible to the similarly situated persons and juniors to the applicant;

(D). To direct the respondent no.5 to approve the promotion of the applicant even without Acers of the department submits his matter to it.

(E). To issue such order or direction as this Hon'ble Tribunal may deem fit and proper, and

(F). To award the costs of the Original Application to the applicant."

2. The applicant of O.A.No.447/2009 filed the OA under Section 19 of Administrative Tribunals Act, 1985 with the following relief(s):-

(A). To issue a suitable order or direction setting aside the order dated 14.07.09 issued on behalf of the respondent no.2 contained in Annexure No. 1.

(B). To issue a suitable order or direction directing commanding the respondent no.1 to 3 and 5 to reconsider the matter of the petitioner for promotion and to promote him on the post of Assistant Surveyor of Works, Surveyor of Works and Superintending Surveyor of Works with all consequential benefits from the date the respondent no.4 had been promoted.

(C). To issue a suitable order or direction directing commanding the respondent no.1 to 3 and 5 to grant all other consequential benefits as had been made admissible to the similarly situated persons and juniors to the applicant;

(D). To direct the respondent no.5 to approve the promotion of the applicant even without Acers of the department submits his matter to it.

(E). To issue such order or direction as this Hon'ble Tribunal may deem fit and proper, and

(F). To award the costs of the Original Application to the applicant."

3. As the controversy in both the cases, are one and the same as such, they are being disposed of by a common judgment.

4. The facts of O.A.No.475/2009 and O.A.No.447/2009 which are averred by the applicants are that the applicants were appointed on the post of Surveyor Assistant Grade-II in Engineering Cadre of Military Engineering Services on 31.08.1962 and

17.09.1962 respectively. At the time of appointment of the applicant there were two cadres in the MES, one was Engineering Cadre and the other was Surveyor of Works Cadre. The two cadres were merged by Government order dated 23.03.1964. The applicants were placed in the joint cadre. They were promoted as Superintendent (B&R) Grade-I w.e.f. 02.07.1966 and 17.05.1965 respectively. As per the merger order, the post of Superintendent (B&R) Grade-I was equivalent to Surveyor Assistant Grade-I. The two cadres were again demerged by Government Order dated 31.03.1978. The applicant opted for Surveyor of Works Cadre and were designated as Surveyor Assistant Grade-I. As per the condition of demerger paragraph 5 and 5 (b), it was categorically provided that the seniority list of Surveyor Assistant Grade-I (in the Surveyor of Works Cadre) shall be made on the basis of the dates of assuming charge as Superintendent (B&R) Grade-I in the joint cadre. As the applicants were working on the post of Superintendent (B&R) Grade-I since 02.07.1966 and 17.05.1965 respectively, their seniority in the cadre of Surveyor Assistant Grade-I has to be given from that date. The initial seniority list of Surveyor Assistant Grade-I after the demerger was published on 23.10.1978 in which the applicant of O.A.No.475/2009 was placed at Sl.No.311 and that of O.A.No.447/2009 was placed at Sl.No.216 and the (common) Respondent No.4 were placed at Sl.Nos.321 (b). This seniority list was revised by an order dated 06.02.1979 in which the applicants were placed at Sl.No.257 and 185 respectively and the (Common) Respondent Nos.4 was placed at Sl.Nos.269. By separate G.O. dated 18.09.1979 some amendments to the demerger order dated 31.03.1978 were sought to be

incorporated. Several persons represented against the G.O. dated 18.09.1979 and decision was taken by on 5.09.1980 to restore the position as on 31.03.1978. Thus, the provisions of seniority as provided in the GO dated 31.03.1978 was again made applicable and fresh options were invited (Annexure-6). As per the said letter, the seniority list already issued on 23.10.1978 remained in operation with some minor changes and modifications. But the matter did not attain finality there. The last and final seniority list was published on 26.12.1980 in which the name of the applicant of O.A.No.475/2009 was placed at Sl.No.177 and the applicant of O.A.No.447/2009 was placed at Sl.No.123. The common Respondent No.4 did not figure in the said seniority list as the seniority list only contained the names of the person's upto Sl.No.262 his position fell beyond Sl.No.262.

5. On 19.14.1982, the office of the Engineer-in-Chief approved a panel of 105 names for ad-hoc promotion from the post of Surveyor Assistant Grade-I to Assistant Surveyor of Works (ASW) in which the name of the Respondent No.4 alongwith certain other juniors persons were included. Such persons were promoted to the post of Assistant Surveyor of Works initially on ad-hoc basis and thereafter the same was regularized on 28.6.1982. The said promotion was granted to the Respondent No.4 and other junior person treating them to be separate class of Surveyor Assistant Grade-I even after merger in 1964 and demerger in 1978 ignoring the fact that the applicant stood higher in the Surveyor Assistant Grade-I as published on 26.12.1980. The respondent once again conducted a selection in the year 1986 by clubbing the

vacancies for the year 1982 to 1985 and the said selection was challenged by one Sri Krishan Chandra through O.A.No.1037/1986 before the Principal Bench of this Tribunal, which was allowed by the Principal Bench of this Tribunal by its order dated 28.8.1987. One more judgment in O.A.No.1548/1991 and 343/1992, the Ernakulum Bench by its order dated 09.10.1992 allowed the OAs. The Tribunal in the 2 sets of OAs directed the respondent to prepare a seniority list and promote the persons in accordance with their seniority from the post of Surveyor Assistant Grade-I to the post of Assistant Surveyor of Works against year wise vacancies from 1982 to 1985. In this order, it was also provided that the seniority of all persons were to be fixed from the date of first promotion to the post of Superintendent (B&R) Grade-I/Surveyor Assistant Grade-I. Several other OAs for instance O.A.No.1548/1991, O.A.No.312/1991 along with O.A.No.448/1993, O.A.No.1042/1993, O.A.No.1954/1993, O.A.No.3164/1992, O.A.No.3126/1991, O.A.No.448/1993, O.A.No.1042/1993, O.A.No.1954/1993, O.A.No.3164/1994 etc. were filed by the similarly situated persons relying on the case of Krishan Chandra's before the various benches of the Tribunal. These O.A. were variously decided in favour of the applicants therein. Accordingly, all the applicants of various OAs were given reliefs in terms of the Krishna Chander case. But in view of conflicting order passed in O.A.No.692/1990 a reference was made before the Full Bench and the case of the applicant is covered under the findings given in the order dated 19.01.1999.

6. As per the law laid down by the Principal Bench in their order dated 28.08.1987. The fixing of seniority of all

existing Surveyor Assistant Grade-I irrespective of their assuming charge as Surveyor Assistant Grade-I/Superintendent B/R/ Grade-I is totally wrong. The comparative service profile of the applicant vis-à-vis the respondent no.4 is as follows:-

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Event	Applicant OA.475/09/O.A.447/09	Respondent No.4
Appointed as SA Gde-II/Supdt. B/R Gde-II	31.08.62/17.08.62	01.04.66
Promoted as SA Gde-I/Supdt.B/R Gde-I	02.07.66/ 17.05.65	06.07.68
Seniority list of 1978 Serial No.	311 / 216	321 (b)
Seniority list of 1979 Serial No.	257 / 185	269
Seniority list of 1980	177 /123	More than 262

Thus, they are bound to be placed above the Respondent No.4 in the seniority list.

7. Meanwhile, the Respondent No.4 was promoted to the post of Surveyor of Works on 16.09.1987 and Supdt. Surveyor in 1996.

8. The applicants retired from service on 31.12.1997 from the post of ASW and 30.11.2001 from the post of Supdt. Surveyor of Works respectively. When the applicants came to know about in the year 2008 the various judgments of this Tribunal as well as the fact that the junior persons have been promoted retrospectively to higher posts without considering their claims then gave an application to the respondents on 25.02.2008, 27.03.2009 (Applicant No.1) and 20.02.2008, 23.04.2008, 30.06.2008 (Applicant No.2) seeking for consideration of their case in the light of decision passed in Krishna Chander's case. The applicants filed O.A.No.211 of 2008 and

O.A.No.364/2008 respectively before this Tribunal, which was disposed of by order dated 04.04.2009 and 20.05.2009, directing the respondents to reexamine the claim of the applicant in the light of the judgment of Sri Krishna Chander's case for fixation of seniority and for consideration of his case for promotion. The respondents without application of their mind have passed the impugned order dated 04.04.2009 (Annexure-1). Hence, this OA.

9. The respondents have contested the claim of the applicants by filing their counter affidavit through which they have sought for dismissal of this OA on the ground of delay and latches. Their contention is that the applicants have sought for their promotion as Assistant Surveyor of Work w.e.f. 1982 as Surveyor of Works w.e.f. 1987 as the respondent 4 was promoted on those dates after a lapse of so many years. Such a request after such long gap is barred by limitation as provided in Administrative Tribunal Act, 1985. They have also placed reliance on the decision of ***Hon'ble Supreme Court in the case of B.S. Bajwa vs. State of Punjab 1998 (2) SCC-523***, wherein the Hon'ble Supreme Court has held that "It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justified." The prayer for re-settling well settled seniority after a long delay is also not reasonable in view of the law laid down by the ***Hon'ble Supreme Court in the case of P.S.N. Rao vs. State of Orissa & Others 2002 (5) SC-172*** wherein, it has been held that "Any interference in the matter at such a belated stage would have resulted in

disturbing chain of settled positions and would have created confusion and complication in the cadre." The delay in claiming promotion is further disallowed by ***Hon'ble Supreme Court in the case of Ghulam Rasool Lone Vs. State of Jammu & Kashmir & Another reported in (2009) 15 SCC-321.***

10. The DPC of the post of ASW was held in 1982 and that of SW in 1987 and a review of the cases cannot be conducted as all relevant files have been destroyed or are not traceable. Moreover, the applicants have retired in the year 1997 and 2000. All papers pertaining to their cases have been destroyed as per departmental policy of retaining them for 5 years after their retirement.

11. The respondents have further claimed that the judgments of the Principal Bench and Ernakulum Bench cannot be read in isolation and are not the obiter dictum cannot be treated as direction for all purposes. The Hon'ble Full Bench made in Annexure No.11 which are cited hereunder:-

"9.....Different dates of induction to similar optees and /or different basis for seniority fixation cannot be imagined and , therefore, to this extent the applicants cannot be denied the benefit of the decision of the Tribunal in Krishna Chandra case (supra) on the ground of limitation." Deponent has been advised to submit that the conjunction "therefore" has to be read and understood with caution and circumspection. Apparently and substantially the referred conjunction denotes some specific or particular thing and not in

general hence the relaxation of limitation granted by the Hon'ble Full Bench of this Tribunal was aimed at the redresses of grievances of Applicants of those O.As. and not for general purposes."

12. The Engineer-in-Chief vide letter dated 19.04.1982 had constituted a panel of 105 names for ad-hoc promotions for one year from Surveyor Grade-I to A.S.W. while the Resp.No.4 was considered, the applicant was not considered.

13. The applicants have filed Rejoinder Affidavits to all the Counter Affidavits and Supplementary Counter Affidavits filed by the respondents more or less reiterating his contentions as raised in the OA. The applicant, through their Rejoinder Affidavits, have stated that there is no limitation in their case and plea of destruction of records cannot be the ground for deciding a case on merits.

14. The learned counsel or the applicant during the course of hearing has placed reliance upon the judgment of ***Hon'ble Supreme Court in K.C. Sharma an Others. Vs. Union of India & Others reported in AIR 1997 SC-3588*** wherein it has been held that when a case covered by full bench of the Tribunal the delay, if any, merits condonation.

15. The learned counsel for the respondents have argued based on the judgment of Hon'ble Delhi High Court in ***Ex. Naik Charan Singh Vs. Union of India & Others*** dated 13.07.2006 and in the case of ***Shri Ram***

Bachan Ram Vs. Union of Indian & Others in O.A.No.754/2001 of CAT, Principal Bench the present OA is liable to dismissed on the ground of limitation and plural remedies.

16. We have heard the learned counsel for both the parties and perused the entire material available on record.

17. In this case the applicant are seeking for promotion to the post of Assistant Surveyor of Works w.e.f. 1982, as Surveyor of Works w.e.f. 1987, and as Superintendent Surveyor of Works w.e.f. 1995 on the basis the promotions given to Respondent No.4 claiming that they were placed higher than him in the seniority list of Surveyor Assistant Grade-I subsequent to demerger after 31.03.1978. They are claiming similarity to the applicants in various OAs following the case of Krishna Chanders case. They have pleaded that there is no delay /latches in seeking relief in terms of the order of the **Full Bench of this Tribunal in Kr. Gajendra Singh Vs. U.O.I & Others decided on 18th January, 1999.**

18. The respondents on the other hand have stated that the applicant's case is not covered by the Full Bench Judgment rendered in O.A.No.3126/1991 and other connected cases and have sought for dismissal of objection regarding delay and latches as the applicants seeks to correct the seniority list prior to 1991. The respondents have further stated that all record pertaining to the applicant and record of DPC held in 1982/1987 and have been destroyed in accordance with the departmental rules in which record are to be kept for five

years against cases where no departmental case is pending. Since the applicants retired in 1996/2011 as such records pertaining to the applicants are not available in the department. They have also taken a technical plea that the OA is barred by principles of estoppels as they had accepted the promotion to JSW in the year 1991 in accordance with seniority list of 1991 (subsequently revised to promotion as ASW against vacancies of 1993-94). This seniority list of 1991 was never challenged by them.

19. The applicants have based their claim of seniority on demerger and separation of cadre on the basis of judgment pronounced in O.A.No.1037/1986 in Krishna Chandra case decided in 28.8.1987. Between the date pursuant of this order and the date of Full Bench decision in O.A.No.3126/1991 various cases were filed before the various Benches of the Tribunal arising out of the same issue. Admittedly, the applicants were not a party to any of those cases. Subsequently, the Full Bench was constituted. The Full Bench (O.A.No.3126/1991 etc.) has in its decision has looked into the following issues:-

“(i). Whether on demerger of Engineering cadre and constitution of two separate cadres of Engineering and Surveyor of Works pursuant to letter dated 31.3.1978 of the Government of India, the optees were entitled to be inducted in Surveyor of Works cadre w.e.f. 1978 and to other relief as were granted to the applicant in **Krishna Chander's** case (supra); or from 5.1.1981 on the basis of their fresh options pursuant to subsequent letters dated 18.9.1979 and 5.9.1980 of the Government of India in accordance with the decision of the Tribunals **Shri Shanta Nand Sharma's** case (supra)?

(ii). Whether the claim is barred by time."

20. The issues were answered in the following terms:

"13. Accordingly our answers to the aforesaid questions arising out of the order of reference are as follows:

(i). On demerger of Engineering cadre and constitution of two separate cadres of Engineering and Surveyor of Works pursuant to letter dated 31.3.1978 of the Government of India, the optees were entitled to be inducted in Surveyor of Works cadre w.e.f. 1978 as per Krishna Chander's case (supra) but they would not be entitled to other reliefs granted to the applicant in Krishna Chander's case unless they succeeded in showing their such ancillary reliefs to be within time (Emphasis supplied).

(ii). Individual cases of the applicants in the said O.As. are required to be examined in the light of paragraphs 8 and 9 of this order before granting or refusing reliefs on the ground of limitation.

14. Let all these O.As. be now sent back to the appropriate D.B. for further hearing and disposal in accordance with law."

21. In the case of **Kr. Gajendra Singh & others vs. Union of India & Others the Full Bench of the Tribunal** in para-8 and 9 has held as under:-

8. In Shata Nand Sharma's case (supra), delay in approaching the Tribunal was not specifically held to be fatal, but in Om Prakash Satija's case (supra), similar claim of a similar employee was held to be barred by time on the authority of Bhoop Singh's case (supra). Following these authorities, the learned Administrative Member of the D.B. making the present reference held the claim of the present applicants to be barred by time.

9. In Bhoop Singh's case (supra), the Supreme Court was considering the case of a Constable in Delhi Police, who had been dismissed from service in 1967 for his participation in a mass strike of that year, but had approached the Tribunal in 1989, basing his claim for reinstatement and consequential reliefs on a case of a similarly situated employee favorably decided by the Delhi High Court in 1975 on the basis of his petition filed in 1969. The case was held to be barred by time and dismissed. In paragraph 6 of its judgment, the Supreme Court said;

“....If the petitioner’s contention is upheld that lapse of any length of time is of no consequence in the present case, it would mean that any such police constable can choose to wait even till he attains the age of superannuation and then assail the termination of his service and claim monetary benefits for the entire period on the same ground. That would be a startling proposition. In our opinion, this cannot be the true import of Article 14 or the requirement of the principle of non-discrimination embodied therein, which is the foundation of petitioner’s case.”

Here we have a dispute about the date of induction of the optees in the cadre of Surveyor created by the Government by its successive letters dated 31.3.1978, 18.9.1979 and 5.9.1980. As per their first options, the optees would have been and were actually inducted in that cadre in 1978 itself, but pursuant to their fresh options on the basis of Government letter dated 05.09.1980, they were deemed to have been inducted in Surveyor cadre with effect from January 1981 and accordingly their seniority was reckoned. This gave cause to the optee i.e. Krishna Chander’s case (supra) to question the date of induction and seniority fixation on that basis, because he was excluded from consideration for promotion to higher post against 1979 vacancy. The application was allowed and the date of induction in the cadre of Surveyor and that of seniority fixation were directed to be on the basis of the option of 1978. Different dates of induction to similar optees and /or different basis for seniority fixation cannot be

imagined and, therefore, to this extent the applicants cannot be denied the benefit of the decision of the Tribunal in Krishna Chander's case (supra) on the ground of limitation."

22. A totality of the reading of the relevant portions would reveal that it is only in the matter of date of induction of the cadre of Surveyor created by the Government of Indian by its successive letter dated 31.3.1978, 18.9.1979 and 5.9.1998 and fixation of seniority, the ground of limitation would not come in the way. A careful reading of the relief prayed for reveals that the applicants have prayed for promotion from the date of promotion of Respondent Nos. 4 and certain others unnamed "juniors". They are not claiming a specific position in a seniority list. Infact while they have mentioned their relative position in the seniority list of 23.10.1978 06.02.1979 and 28.12.1980 but they never challenged the same at the time of their publication. Therefore, delay in seeking relief has to be examined with regard to seeking promotion from the date of promotion granted to Respondent Nos.4. The applicants have not produced any copy of the promotion orders. However, from the statements of the respondents, it is deduced that the promotions are sought w.e.f. 1982, 16.09.1987 and 1996. Section-19 of the Administrative Tribunals Act, 1985 states the following:-

"Section-19. Applications to Tribunals -

(1) Subject to the other provisions of this Act a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.

Explanation - For the purposes of this sub-section, "order" means an order made –

(a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation [or society] owned or controlled by the Government ; or

(b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation [or society] referred to in clause (a).

(2) Every application under sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee (if any, not exceeding one hundred rupees) [in respect of the filing of such application and by such other fees for the service or execution of processes, as may be prescribed by the Central Government].

[(3) On receipt of an application under sub-section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit case for adjudication or trial by it, admit such application; but the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons.]

(4) Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules."

Moreover, we are inclined to place reliance upon the case cited by the respondents as well as **Uma Shankar Vs. U.O.I. 2002 (2) ESC-343** that the OA is liable to be dismissed on the ground of delay and latches. However, the Hon'ble Supreme Court in **U.O.I. Vs. M.K. Sarkar**

(2010) 2 SCC-59 and **Shiba Shankar Mohapatra vs. State of Orissa** (2010) 12 SCC-471 have held that mere decision of a representation with regard to a "stale" or "dead" issue will not give rise to a fresh cause of action. The Hon'ble Supreme Court in **BSNL Vs. Ghanshyam Das** (2011) 4 SCC-374 & **High Court Patna vs. Madan Mohan** (2011) 9 SCC-65 have held that similar relief cannot be given to a person who slept over his right. In **Ghulam Rasool Lone Vs. State of JK** (2009) 15 SCC-321 the Hon'ble Supreme Court has held delay in claiming promotion cannot be overlooked and hold that the relief sought for is highly barred by time.

23. Coming to the merits of the case, the respondents have stated in their Counter Affidavit that the panel for promotion to the post of ASW prepared by DPC in March, 1986 was quashed by order dated 28.8.1987 passed in O.A.No.1037 of 1986 (Krishna Chander's case). The operative portion of this order also includes the following direction:-

"In the facts and circumstances, we allow the application with the following directions:-

"(a).

(b).

(c).

(d). The respondents should identify year-wise regular vacancies in the promotion quota in the grade of ASW's between 1982 and 1986 and hold review DPC for each year till 1986 to prepare year-wise panels in accordance with the instructions of 24th December, 1980. Promotions of ASWs should be made on the basis of the year-wise panels so prepared.

(e)."

24. The applicants have not produced any material to show that the direction so given were never implemented or that they were unfairly left out of the zone of consideration for promotion in the grade of ASW in any of the vacancy year of 1982-1986 when their alleged juniors were considered for promotion. The basic fact of Shri Krishna Chander is that Shri Chander joined as Superintendent (B&R) Grade-II in the MES on 13.12.1956. The applicants joined as Superintendent (B&R) Grade-II in MES w.e.f. 31.08.1962 & 17.09.1962. Shri Krishna Chander was promoted as Superintendent Grade-I on 19.01.1963 and the applicants as Superintendent Grade-I on 02.07.1966 and 17.05.1965. Respondent No.4 was promoted as ASW in 1982 SW on 1987 and SSW in 1995. The applicant of O.A.No.475 retired as ASW and the applicant of O.A.No.447/2009 retired as SSW which means that he had been promoted as SW and then SSW on different dates which have not been disputed. Promotion is not a matter of right. Consideration for promotion on the basis of recruitment/promotion rules is a right. The Applicants have not produced any departmental Rule to demonstrate that promotion involves no selection but is automatic on the basis of seniority. The applicants have sought to be promoted on the same date as their alleged junior. In their minds there appears no other ground than seniority. The burden of proof lies on the applicant to demonstrate alongwith rules of promotion that seniority alone was the sole criteria for various levels of promotions as claimed by them. The applicants have failed to provide any material to establish the same. Infact have accepted some promotion as they retired from

the post of ASW & SSW respectively. This having once accepted their promotion on some posts w.e.f. a particular date, they cannot now turn back and claim a prior date of promotion.

25. In view of the above, the OA is deserves to be dismissed and is accordingly dismissed on the ground of delay and latches and also on merits. No order as to costs.

Member (A)

Member (J)

Amit/