

**CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH, LUCKNOW**

**Reserved on 18.02.2015.**

**Pronounced on** 5<sup>th</sup> March 2015

**Original Application No.53/2009**

**Hon'ble Mr. Navneet Kumar, Member (J)**

**Hon'ble Ms. Jayati Chandra, Member (A)**

Thanwar Poptani aged about 71 years, son of Sri Tola Ram, R/o 21/215, Indira Nagar, Lucknow (U.P.).

**-Applicant.**

**By Advocate: Sri Prashant Kumar Singh.**

**Versus.**

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Engineer-in-Chief, Army Head Quarter, Kashmir House, Defence Head Quarter, New Delhi.
3. Garrison Engineer (West), Lucknow Cantt., Lucknow.
4. Sri F.S. Verma, Superintending Surveyor of Works, C/o Engineer-in-Chief's Branch, Kashmir House, New Delhi.
5. Sri A.D. Savaley, Superintending Surveyor of Works, C/o Engineer-in-Chief's Branch, Kashmir House, New Delhi.

**-Respondents.**

**By Advocate: Sri Deepak Shukla.**

**ORDER**

**By Ms. Jayati Chandra, Member (A)**

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, seeking the following relief(s):-

(A). to issue a suitable order or direction setting aside the order dated 23.07.2008, contained in Annexure No.12 to the Original Application.

(B). to issue a suitable order or direction directing commanding the opposite parties to promote the

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*applicant on the post of Assistant Surveyor of Works, Surveyor of Works and Superintending Surveyor of Works from the date the opposite parties No.4 and 5 and other junior persons had been promoted.*

*(C). to issue a suitable order or direction directing commanding the opposite parties to grant all other consequential benefits as had been made admissible to the similarly situated persons and juniors to the applicant.*

*(D). to issue such other order or direction as this Hon'ble Tribunal may deem fit and proper; and*

*(E). to award the costs of the Original Application to the applicant."*

**2.** The facts of the case which are averred by the applicant are that he was appointed on the post of Superintendent (B&R) Grade-II in Engineering Cadre of Military Engineering Services on 31.12.1959. 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 applicant opted for the joint cadre. He continued to work on the post of Superintendent (B&R) Grade-II till he was promoted to Superintendent (B&R) Grade-I. The two cadres were again demerged by Government Order dated 31.03.1978. The applicant opted for Surveyor of Works Cadre and was 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 applicant was working on the post of Superintendent (B&R) Grade-I since 08.05.1965, his seniority in the cadre of Surveyor Assistant Grade-I has to be given from that date. The initial seniority list of Surveyor Assistant

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Grade-I after the demerger was published on 23.10.1978 in which the applicant was placed at Sl.No.195 and the Respondent No.4 and 5 were placed at Sl.Nos.215 and 321 (b) respectively (Annexure-4). This seniority list was revised by an order dated 06.02.1979 in which the applicant was placed at Sl.No.170 and the Respondent Nos.4 and 5 were placed at Sl.Nos.184 and 269 respectively. 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 would remain in operation with some minor changes and modifications. The last and final seniority list was published on 26.12.1980 in which the name of the applicant was placed at Sl.No.177 and the name of Respondent No.4 at Sl.No.198 and the Respondent No.5 does 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. The applicant continued to work on the post of Surveyor Assistant Grade-I at various places. 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.5 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

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the same was regularized on 28.6.1982. The said promotion was granted to the Respondent No.5 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 for promotion by clubbing the vacancies for the year 1982 to 1985 and the said selection was challenged by one Sri Krishan Chandra before the Principal Bench of this Tribunal, which was allowed by the Principal Bench of this Tribunal on 28.8.1987 whereby, the Tribunal 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. 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 were filed by the similarly situated persons relying on the case of Krishan Chandra's before the various benches of the Tribunal such as O.A.No.1627/1987 filed by one Sri S. Laxman Das Katariya was allowed by the Principal Bench of this Tribunal on 16.03.1990 and one Sri B. Srinivasan Rao filed O.A.No.1028/1990 before the Ernakulam Bench of this Tribunal, which was decided on 05.09.1991. Both these order orders were passed in favour of the applicant in the respective O.As. The respondent No.4 also filed O.A.No.1548/1991 alongwith one Krishan Kumar before the Ernakulam Bench of this Tribunal which was decided on 09.10.1992 in favour of the applicants

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therein. Accordingly, all the applicants of various OAs were given reliefs in terms of the Krishna Chander case. However, the O.A.No.652/1990 filed before this Tribunal seeking the benefits of the order of Krishna Chander's case was not granted and the O.A.No.786/1993 was also dismissed on the ground of delay and latches. Infact, different judgments passed by the different benches on the ground of delay and latches. As such a Full Bench was constituted for adjudicating the dispute and in the case of Kunwar Gajendra Singh (O.A.No.3125/1991) and other connected matters (O.A.No.448/1993, 1042/1993, 954/1993, 3164/1992 & 1714/1994) the Hon'ble Full Bench of this Tribunal sitting at the Principal Bench passed a judgment on 18.01.1999 and held that the judgment of Krishna Chander's case is a judgment-in-rem and the benefit of the same could not be denied to the similarly situated persons on the issue of delay. The Full Bench Judgment states that as long as a provisional seniority list is acted upon a). person is aggrieved by virtue of improper placement, he may challenge a promotion from the date of knowledge of such promotion of his juniors. But the core issue, that a drawing up of a seniority list of S.A. Grade-I after the demerger in accordance with the principle spelt out in the Krishna Chander case was not done. Then efforts stopped after the issue of letter dated 19.03.1993 (Annexure-11) seeking details of all similarly situated persons from the various units. O.A.No.3126 of 1991 connected with O.A.No.448 of 1993, O.A.No.1042 of 1993, O.A.No.1954 of 1993, O.A.No.3164 of 1992, O.A.No.1712 of 1994 and O.A.No.2698 of 1993 (Annexure 13 were allowed by this tribunal vide order dated 14.07.1999 in the light of the full bench's order dated 18.01.1999. O.A.No.223 of 1995

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file before the Jaipur Bench of this Tribunal was also allowed by order dated 24.08.2000 (Annexure-14). Many of the applicant for example Applicant No.2 Sri Surender Singh in O.A.No.223 of 1995 was junior to the applicant in the cadre of Assistant Surveyor Grade-I and he was allowed the benefits of the promotion with retrospective date. Another person namely Sri Pooran Chandra Jain, who was placed at Sl.No.185-A in the seniority list, filed an O.A.No.173 of 2001 connected with O.A.No.221/2001 before this Bench of the Tribunal was allowed on 18.04.2001 (Annexure-16) in the light of Krishna Chander's case.

**3.** When the applicant came to know about the various judgments of this Tribunal as well as the fact that the junior persons have been promoted retrospectively to higher posts without considering his claim, he gave an application to the respondents on 08.10.2003 (Annexure-17) seeking for consideration of his case in the light of decision passed in Krishna Chander's case. The respondents rejected the representation of the applicant vide order dated 21.11.2003 (Annexure -18). Aggrieved with the aforesaid, the applicant filed O.A.No.2 of 2004 before this Tribunal, which was disposed of by order dated 10.01.2008, 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 23.07.2008 (Annexure-1). Hence, this OA.

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4. The respondents have contested the claim of the applicant by filing their counter affidavit through which they have sought for dismissal of this OA on the ground of delay and laches. Their contention is that the applicant has sought for his promotion as Assistant Surveyor of Work w.e.f. 1979 as Surveyor of Works w.e.f. 1987 and Superintending Surveyor of Works w.e.f. 1995 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.**

5. The DPC of the post of ASW was held in 1982 and a review of the cases cannot be conducted as all relevant files have been destroyed or not traceable.

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6. Coming to the merits of the case, the respondents have fairly stated that as per the seniority list of Surveyor Assistant Grade-I published on 23.10.1978 the applicant and respondent No.4 and 5 were placed in ranking at the Sl. Nos. given below:-

"Applicant	-	195
Opposite Party No.4	-	325
Opposite Party No.5	-	321 (b)."

A seniority list of Surveyor Assistant Grade-I was published on 06.02.1979 in which the applicant and opposite party Nos., 4 and 5 were places as under:-

"Applicant	-	170
Opposite Party No.4	-	184
Opposite Party No.5	-	269."

Thereafter, another seniority list dated 26.12.1988 was published consisting of 262 names, in which the applicant and opposite parties no.4 and 5 were placed as under:-

"Applicant	-	177
Opposite Party No.4	-	198
Opposite Party No.5	-	----."

7. 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. The Resp.No.5 alongwith others, who were juniors to the applicant had been included in the said panel as they found a separate class of Surveyors Assistant Grade-I even after the merger in 1964 and the de-merger in the year 1975. This panel was regularized on 28.06.1982. This panel was assailed by the applicant in O.A.No.1638

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of 1986 before the Principal Bench of this Tribunal and by an order dated 28.08.1987 the panel was quashed (Annexure-7). Thereafter, the benefit of seniority and promotion was granted to the post of ASW and SSW to such of eligible employees as per the prevailing Rules and Regulations. The applicant did not get promotion on those dates as he did not in-qualify the various selections.

**8.** The respondents had created some new post of J.S.W. in 1991 and the applicant was promoted as J.S.W. vide letter dated 11.10.1991. He retired as JSW in 1996. This creation of post of J.S.W. and promotion on such post was challenged in the various Courts and the same was quashed in accordance with the directives of the Court and a review DPC was conducted. The eligible persons, alongwith the applicant, were promotion as A.S.W. against the vacancies of 1993-94 as per the order dated 11.02.2003. This action was done as per the seniority accorded in the year 1991 (Annexure-SA-1). In this list the name of the applicant figured at Sl.No.31. Objections had been invited from all concerned against this seniority list and the applicant had never raised any objection. Infact, he accepted the post of JSW and subsequently, ASW without any protest or claim seeking promotion to the post of ASW in the year 1986 as claimed in the present OA.

**9.** The applicant has filed Rejoinder Affidavit to all the Counter Affidavit filed by the respondents more or less reiterating his contentions as raised in the OA. The applicant, through the Rejoinder Affidavit, has stated that by virtue of his posting at various places, he was not

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aware of the various OAs which had been allowed subsequent to the Full Bench judgment and many persons, who were juniors to him, had been promoted. The seniority list of 1991 had excluded those persons who were junior in the 1978 list, but who were promoted earlier.

10. 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. He has also cited the judgment passed by **Central Administrative Tribunal, Chandigarh Bench in R.A.33/12 in O.A.No.252/CH/1995 decided on 12.12.2012 in re: MES No.408258 Om Prakash Vs. U.O.I. & Others** wherein direction were given to the respondents to re-look at the grievance of the applicant in the light of view obtained by a Full Bench of the Tribunal and followed by the Lucknow Bench of in the cases filed by similarly circumstanced employees.

11. The learned counsel for the respondents have argued based on **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**

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**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.

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

**13.** In this case the applicant is seeking for promotion to the post of Assistant Surveyor of Works w.e.f. 1979, as Surveyor of Works w.e.f. 1987, and as Superintendent Surveyor of Works w.e.f. 1995 on the basis of his placement in the seniority list of Surveyor Assistant Grade-I subsequent to demerger after 31.03.1978. He is claiming similarity to the applicants in various OAs following the case of Krishna Chanders case. He has 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 18<sup>th</sup> January, 1999.**

**14.** 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 has sought for dismissal of objection regarding delay and latches as the applicant 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 have been destroyed in accordance with the departmental

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rules in which record are to be kept for five years against cases where no departmental case is pending. Since the applicant retired in 1996 as such record pertaining to the applicant is not available in the department. They have also taken a technical plea that the OA is barred by principles of estoppel as he 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 him.

**15.** The applicant has based his 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 applicant was 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.”

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16. 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.”

17. 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 Shats 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

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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

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decision of the Tribunal in Krishna Chander's case (supra) on the ground of limitation."

**18.** 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 India by its successive letter dated 31.3.1978, 18.9.1979 and 5.9.1998 and fixation of seniority on the ground of limitation would not come in the way. A careful reading of the relief prayed for reveals that the applicant has prayed for promotion from the date of promotion of Respondent Nos. 4 and 5 and certain others unnamed "juniors". He is not claiming a specific position in a seniority list. Infact while he has mentioned his relative position in the seniority list of 23.10.1978 06.02.1979 and 28.12.1980 but he has not challenged the same. Therefore, delay in seeking relief has to be examined with regard to seeking promotion from the date of promotion granted to Respondent Nos. 4 & 5. The applicant has 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. 23.10.1978, 06.02.1979 and 26.12.1988. 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 subsection, "order" means an order made –

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(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 e 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 quoted in paras 10 and 11 above) and hold that the relief sought for is highly barred by time.

**19.** Coming to the merits of the case, the respondents have stated in their Counter Affidavit that the panel for

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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 24<sup>th</sup> December, 1980. Promotions of ASWs should be made on the basis of the year-wise panels so prepared.

(e). ...."

**20.** The applicant has not produced any material to show that the direction so given were never implemented or that he was 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 his 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 applicant joined as Superintendent (B&R) Grade-II in MES w.e.f. 31.12.1959. Shri Krishna Chander was promoted as Superintendent Grade-I on 19.01.1963 and the applicant as Superintendent Grade-I on 08.05.1965. Promotion is not a matter of right. Consideration for promotion on the basis of

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recruitment/promotion rules is a right. The respondents have stated that subsequent to the Krishna Chander judgment all eligible persons have been promoted to ASW, AS and SSW on the various parameters of promotion and that the applicant was not eligible for the same. As the applicant has sought to be promoted on the same date as his alleged junior, there appears non 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 him. The applicant has failed to provide any material to establish the same. Infact he had accepted his promotion to the post of JSW on 11.10.1991. He had never represented that his promotion is badly delayed and not in accordance with his seniority. He cannot now turn back and claim a prior date of promotion.

**21.** 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.

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**(Ms. Jayati Chandra)**  
**Member (A)**

*Navneet Kumar*

**(Navneet Kumar)**  
**Member (J)**

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