

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.240/2016

With

OA No.1815/2013

OA No.2176/2013

Reserved on : 25.05.2016
Pronounced on : 20.09.2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

OA No.240/2016

Pankaj Kumar Pathak S/o Prabhu Shankar Pathak,
DCWE (Contracts), HQ CWE (AF) Palam,
Delhi Cantt-110010.

... Applicant

(By Advocate: Mr. Sagar Saxena with Mr. V. K. Garg, Ms. Noopur
Dubey and Ms. Himanshi Saini)

Versus

1. Union of India through
Secretary, Ministry of Defence,
South Block, New Delhi.
2. Engineer-in-Chief,
Military Engineer Service,
Integrated Hqs of MoD (Army),
Kashmir House, Rajaji Marg,
New Delhi-110010.
3. Mr. Atul Kr. Namdev
MES No.405425, HQ CWE (Utilities),
Delhi Cantt.
4. Mr. D. Venkata Maheswar
MES No.190084, HQ CWE (AF),
Tuglaqabad, New Delhi.

5. Mr. Akhilesh Shukla,
MES No.439149, HQ CE (AF),
WAC, Palam, Delhi Cantt. ... Respondents

(By Advocate : Mr. M. K. Gaur for Respondents 1 & 2; Mr. A. K. Behera for Respondents 3 to 5)

OA No.1815/2013

1. Anil Kumar Singh S/o Akhand Pratap Singh,
Joint Director (Contracts),
CE R&D, Probyn Road,
Timar Pur, Delhi.
2. Reji Ashok S/o P. Ashokan,
DCWE (Contracts),
CWE, Jabalpur,
Supply Road, Jabalpur.
3. Arun Kumar S/o Swaroop Narayan,
Joint Director (Contracts),
Chief Engineer, Kolkata Zone,
Kolkata.
4. A. K. Balmiki S/o Siyaram Balmiki,
Joint Director (Contracts),
Chief Engineer, Udhampur Zone,
Udhampur (J&K). ... Applicants

(By Advocate: Ms. Namrata Singh)

Versus

1. Union of India through
Secretary, Ministry of Defence,
South Block, New Delhi.
2. Engineer-in-Chief,
Kashmir House,
Army Headquarters,
New Delhi.
3. G. Srinivasulu
MES No.125391, DCWE (Contracts),
CWE (Chennai),

Pallavan Salai (T.N.).

4. Mansha Ram
MES No.502725.
(service of respondents 3 & 4 through respondent No.2)
... Respondents

(By Advocates: Mr. Ravinder Kr. Sharma for Respondents 1 & 2; Mr. Swatank Shantanu for Respondents 3 & 4)

OA No.2176/2013

1. Pankaj Kumar Pathak S/o Prabhu Shankar Pathak,
Joint Director (Contracts),
CE Siliguri Zone, Sevoke Road,
Siliguri (WB).
2. Sanjeev Kumar Tomar S/o N. S. Tomar,
DCWE (Contracts), CWE, Rajouri,
C/o 56 APO.
3. Ajay Kumar S/o Dhani Ram,
DCWE (Contracts), CWE (Army),
Jodhpur (Rajasthan).
... Applicants

(By Advocate: Ms. Namrata Singh)

Versus

1. Union of India through
Secretary, Ministry of Defence,
South Block, New Delhi.
2. Engineer-in-Chief,
Kashmir House,
Army Headquarters,
New Delhi.
3. Manoj Kumar Gupta
MES No.439633, DCWE (Contracts),
CWE (AF), Bikaner (Raj.).
4. Akhilesh Shukla
MES No.439149, DCWE (Contracts),
CWE, Port Blair

(service of respondents 3 & 4 through respondent No.2)
... Respondents

(By Advocates: Mr. Ravinder Kr. Sharma for Respondents 1 & 2; Mr. Swatank Shantanu for Respondents 3 & 4)

O R D E R

Justice Permod Kohli, Chairman :

The dispute in these OAs relates to *inter se* seniority and promotion amongst the applicants and private respondents. All the parties, i.e., the applicants and private respondents, were recruited to the Military Engineer Service (MES) as Assistant Surveyor of Works (ASW) through the Combined Engineering Services Examination conducted by the UPSC. In OA No.1815/2013, the applicants and respondent No.3 were directly recruited as ASW in the year 1996/1997, whereas respondent No.4 was promoted as ASW in 1997. Applicants and private respondents in OA No.2176/2013 and OA No.240/2016 were recruited in the year 1997-98. After their appointment, all India seniority list of ASWs was circulated vide circular dated 22.06.2001. In OA No.240/2016, the applicant, namely, Pankaj Kumar Pathak, was placed at serial number 50, whereas the private respondents 3 to 5 were at serial numbers 53, 54 and 59 respectively. In OA No.1815/2013 there are four applicants and two private respondents. The applicants were shown at serial numbers 22, 24, 25 and 31, whereas the private respondents 3 and 4 were at serial numbers 23 and 49 respectively, of the aforesaid seniority list.

In OA No.2176/2013, the first applicant Pankaj Kumar Pathak is also the applicant in OA No.240/2016. He and the two other applicants are shown at serial numbers 50, 51 and 57, whereas the private respondents 3 and 4 are at serial numbers 52 and 59 respectively, of the aforesaid seniority list. However in the latest seniority list published on 25.02.2013 as on 01.01.2013, applicant Pankaj Kumar Pathak (OA No.240/2016) is shown at serial number 28, whereas the respondents 3 to 5 are shown at sl. nos.16, 17 and 15 respectively. The applicants in OA No.1815/2013 are shown at sl. nos.18, 19, 23 and 25, whereas the private respondents 3 and 4 are shown at sl. nos.12 and 13 respectively. Similarly, the applicants in OA No.2176/2013 are shown at sl. nos.28, 39 29, whereas private respondents 3 and 4 are shown at sl. nos.14 and 15 respectively of the aforesaid seniority list. It is relevant to note that Pankaj Kumar Pathak is applicant in OA No.240/2016 as also in OA No.2176/2013. Similarly, Akhilesh Shukla is common respondent in both the aforesaid OAs.

2. The hierarchy in the service as also the recruitment and promotion is governed and regulated by the statutory rules, namely, the Military Engineer Service (Surveyor of Works Cadre) Recruitment Rules, 1985. Schedule B appended to the Rules contains various posts in the service and also the qualification and mode of

recruitment/promotion from one cadre to another. The entry in the service is at the level of Assistant Surveyor of Works. 50% of the posts are to be filled up by direct recruitment through the Engineering Services Examinations held by UPSC, and 50% by promotion from amongst Surveyor Assistant Grade-I holding degree in Civil Engineering from a recognized university or equivalent or having passed Direct Final Examination of the Institution of Surveyors (India) with five years of regular service in the grade, and some other categories. In the present case, the dispute relates to the seniority of the direct recruits. The academic qualification required for appointment to the post of ASW, as per the recruitment rules, is degree in Engineering from a recognized university or equivalent. The next post in the hierarchy is Surveyor of Works (SW), and all posts are to be filled up by promotion from amongst Assistant Surveyor of Works with four years of regular service in the grade and having passed the Final Examination of the Institution of Surveyors (India) or equivalent. The next higher post is that of Superintending Surveyor of Works (SSW) to be filled up by promotion from Surveyor of Works who have reached the stage of Rs.2000/- in the Junior Administrative Grade (Rs.1500-2000) and have stagnated at the maximum for a period two years. The highest post in the hierarchy is Chief Surveyor of Works (CSW) (i) Senior Administrative Grade Level-I (Rs.2500-2750) – 1 post, and (ii) Senior Administrative Grade

Level-II (Rs.2250-2500) - 2 posts. The post of CSW (SAG Level-II) is to be filled up by promotion from Superintending Surveyor of Works with seven years of regular service in the grade including the service rendered in the grade of Superintending Surveyor of Works (Selection Grade), and the post of CSW (SAG Level-I) from CSW (SAG Level-II) appointed on regular basis.

3. Vide letter dated 06.04.1988, respondent No.2 communicated to all the five Commands that for promotion to the post of Surveyor of Works, the Assistant Surveyor of Works should have four years regular service in the grade and must have passed the final/direct final examination of Institution of Surveyors (India) or equivalent. Later, the position was clarified by UPSC vide its letter dated 30.01.1994 that the final examination of the Institution of Surveyors (India) in the Building & Quality Surveying has been recognized by the Government of India as equivalent to degree in Engineering for purpose of recruitment to superior services/posts under the Central Government. The Government of India through the Ministry of Human Resources Development, Department of Education, vide letter dated 21.01.1995 also acknowledged that degree in Civil Engineering of a university is recognized as equivalent to final examination of the Institution of Surveyors in Building & Quality Surveying.

4. Respondents No.4 and 5 in OA No.240/2016 were promoted as SWs from the post of ASW in the year 1998-2000, while respondent No.3 was promoted in the year 2001, whereas the applicant though senior to them, was not considered for promotion. Similarly, private respondents in other two OAs were promoted as SWs earlier than the applicants therein. Admittedly, the applicants and the private respondents in all the cases were in possession of degrees in Civil Engineering. However, the applicants had not passed the final examination of the Institution of Surveyors (India), whereas the private respondents had qualified such examination. The private respondents were accordingly considered on the basis of their having passed the final examination of Institution of Surveyors (India). The recruitment rules of 1985 were replaced by MES (Quantity Surveying & Contract Cadre) Group-A Posts, Recruitment Rules, 2005, wherein the designation of the post of Surveyor and Surveyor (Selection Grade) was changed to Executive Engineer (QS&C) and Executive Engineer [QS&C (NFSG)]. All the applicants also passed the final examination of the Institution of Surveyors (India) between the years 2001 and 2004 and were thus promoted as Surveyors in the respective DPCs with effect from the dates shown in the following table:

OA No.	Applicant No.	Date of promotion as SW
240/2016		24.06.2004
1815/2013	1	08.05.2002
	2	23.05.2002
	3	25.08.2003
	4	01.09.2003
2176/2013	1	24.06.2004
	2	05.05.2006
	3	24.06.2004

In all the seniority lists published up to 25.02.2013 as on 01.01.2013, the applicants were placed below the private respondents in these OAs.

5. Reliefs sought by the applicants in the above OAs are as under:

OA No.240/2016

- “a) declare illegal, null & void any action by respondents No.1 & 2 for filling up of the promotional post of SE (QS&C) without first determining the candidates eligible and in the zone of consideration in terms of judgment dated 04.08.2015 of the Hon’ble Supreme Court of India in Civil Appeal No.5944/2015; and
- b) direct respondents No.1 & 2 to consider the applicant for promotion to the post of SE (QS&C) alongwith all other eligible candidates but not later than respondents No.3 to 5; and
- c) pass any such further order or direction as may be deemed fit, proper and necessary.”

OA No.1815/2013

- “a) quash All India Seniority List for the post of Executive Engineer (QS&C) as on 01.01.2013 circulated vide letter dated 25.02.2013 to the extent the applicants have been denied seniority w.e.f. the

date when their admitted juniors i.e. respondents No.3 & 4 have been accorded such seniority; and

- b) direct respondents to conduct review DPC for the post of Executive Engineer (QS&C) and accord applicant No.1 promotion w.e.f. the date at least when respondent No.3 was promoted as and applicants No.2 to 4 w.e.f. the date when respondent No.4 was promoted as such; and
- c) direct the respondents to draw All India Seniority List of Executive Engineer (QS&C) and placing the name of applicant No.1 therein at a place immediately above respondent No.3 and applicants No.2 to 4 immediately above respondent No.4; and
- d) pass any such further order or direction as may be deemed fit, proper and necessary."

OA No.2176/2013

- "a) quash All India Seniority List for the post of Executive Engineer (QS&C) as on 01.01.2013 circulated vide letter dated 25.02.2013 to the extent the applicants have been denied seniority w.e.f. the date when respondents No.3 & 4, admitted juniors of the applicants No.1 & 2 and respondent No.4, admitted junior of applicant No.3 have been accorded such seniority; and
- b) direct respondents to conduct review DPC for the post of Executive Engineer (QS&C) and accord applicants No.1 & 2 promotion w.e.f. the date at least when respondent No.3 was promoted as such and applicant No.3 w.e.f. the date when respondent No.4 was promoted as such; and
- c) direct the respondents to draw All India Seniority List of Executive Engineer (QS&C) and placing the name of applicants No.1 & 2 therein at a place immediately above respondent No.3 and of applicant No.3 immediately above respondent No.4; and
- d) pass any such further order or direction as may be deemed fit, proper and necessary."

6. It may be noted here that even though the respondents construed the Rules of 1985 for purposes of promotion to mean that passing of final examination of the Institution of Surveyors (India) is also an essential qualification along with the degree in Civil Engineering and promotions of private respondents were made on that basis, however, the issue came to be considered by the Chandigarh Bench of this Tribunal in OA No.1217-JK of 1994 in *R. K. Gupta v Union of India & others*, decided on 15.11.1996, wherein it was held that once a person is holding the degree of Civil Engineering, then he is not required to pass the final examination of the Institution of Surveyors (India). Accordingly, the action of the respondents in reverting the applicant therein from the post of SW to that of ASW and denying him promotion to the grade of SW on the ground that he had not passed the final examination of the aforesaid Institution was held to be illegal and unwarranted. Another Bench of the Tribunal at Guwahati decided OA No. 137/1996, and taking into consideration the decision of the Chandigarh Bench in *R. K. Gupta's* case (supra) directed the respondents to examine as to whether degree in Civil Engineering can be regarded as equivalent to the Direct Final (Sub. Div. II) Examination conducted by the Institution of Surveyors, and also to examine the letter of UPSC dated 31.12.1994. Pursuant to the direction of the Guwahati Bench of the Tribunal in the aforesaid OA, the Government took an administrative

decision on 07.06.2000 to the effect that degree in Engineering of a specific field cannot be equated to be equivalent to a degree in another specific field, and that passing of the examination of the Institution of Surveyors is a special qualification, which is prerequisite to become eligible for promotion to Surveyor of Works, and is not equivalent to a degree in Civil Engineering. Later, another OA No.1333/PB/1992 titled *Sunil Vishnupant Mane v Union of India & others* was decided by the Chandigarh Bench of this Tribunal vide judgment dated 02.08.2000 relying upon the judgment dated 15.11.1996 in *R. K. Gupta's* case (supra). The order of the Tribunal passed in the case of *Sunil Vishnupant Mane* was challenged before the High Court of Punjab & Haryana in CWP No.1694/2001. The writ petition was dismissed upholding the order of the Tribunal. Another OA was filed by one *Avinash Chander Dutta* at Jammu. The said OA was decided in terms of *R. K. Gupta's* judgment, and a writ petition before the High Court of Punjab & Haryana by the Union of India, being CWP No.1997(CAT)/1999 was decided by the Division Bench of the High Court vide order dated 18.10.2001 approving the judgment in *R. K. Gupta's* case. A Full Bench of the Tribunal again considered the controversy in OA No.1290/2001 and connected OAs, and vide its judgment dated 03.03.2003 relied upon the judgment in *R. K. Gupta* (supra) of the Chandigarh Bench and the judgment of the Division Bench of the High Court of Punjab & Haryana in CWP

No.1997(CAT)/1997 dated 18.10.2001, wherein the following observations were made:

“In our opinion, the reasons assigned by the Tribunal in *R. K. Gupta's* case which has been referred to in the impugned order do not suffer from any legal infirmity warranting interference by this Court. It has not been disputed by the petitioners that the Union Public Service Commission in its communication dated 31.1.1994 (Annexure R-2) and the Government of India in its letter dated 21.4.1995 (Annexure R-1) had clearly indicated that the Final Examination of the Institution of Surveyors (India) has been recognized as equivalent to the Degree in Engineering for the purpose of recruitment to superior services/posts under the Central Government. In *R. K. Gupta's* case, the Tribunal interpreted Rule 4 read with Entry 5 of the Schedule and concluded that a person possessing Degree in Civil Engineering from a recognized University is eligible for promotion to the post of Surveyor of Works. The Tribunal also observed that the Degree in Civil Engineering may even be superior to the Final Examination of the Institution of Surveyors (India). In view of this, there is no escape from the conclusion that respondent No.2 was eligible to be considered for promotion as Surveyor of Works on the date his juniors had been promoted and the Tribunal did not commit any illegality by directing the petitioners to consider his case for promotion with retrospective effect.”

The OAs were accordingly allowed with the following directions:

“11. Resultantly, we allow the present applications following the decision of the Punjab and Haryana High Court in Civil Writ Petition No.1997-CAT of 1999 in the case of Union of India & Ors. V The Central Administrative Tribunal and Another rendered on 18.10.2001 and quash the impugned orders. The applicants should be considered for promotion in the face of the above findings and

consequential benefits in accordance with law should be awarded to them. No costs.”

7. The judgment of the Full Bench of this Tribunal was challenged before the High Court of Delhi in WP(C) No.6365/2003. The writ petition was disposed of vide order dated 15.12.2010 directing the respondents to give provisional promotion to the ASWs having degree in Civil Engineering without insisting upon passing of Final Examination of the Institution of Surveyors (India) subject to outcome of SLP (C) No.6471/2003 pending before the Hon'ble Supreme Court. It may be noted herein that the judgment dated 18.10.2001 of the Punjab & Haryana High Court was challenged before the Hon'ble Supreme Court in the aforesaid SLP, wherein vide interim order dated 07.04.2003 contempt proceedings seeking implementation of the order were stayed. The Union of India also filed SLP in case of *Avinash Chander Dutta* (supra). All these SLPs were finally decided by the Hon'ble Supreme Court vide judgment dated 04.08.2015 in Civil Appeal No.5944/2015 titled *Akhilesh Shukla & others v Union of India & others* interpreting the Rules of 1985 to mean that the degree in Engineering shall be treated as a qualification equivalent to the final examination of the Institution of Surveyors (India) for promotion to the post of Surveyor [Executive Engineer (QS&C)]. Present Applications have been filed by the

applicants after the judgment of the Hon'ble Supreme Court in the aforesaid matter.

8. Insofar as the question of interpretation of the statutory rules governing the service is concerned, the final verdict having come from the Apex Court, no further discussion on the same is required. Thus, the applicants were definitely qualified for promotion to the post of Surveyor when the private respondents were promoted during the period 1998-2000 and 2001-2004. However, the fact remains that the applicants did not challenge their promotion at the relevant time. They waited for almost 15 years to move the Court for redressal of their grievances. Mr. A. K. Behera, learned counsel appearing on behalf of respondents 3 to 5 in OA No.240/2016 has sought dismissal of the OA primarily on the ground of limitation, delay and laches. He has submitted a career graph of the applicant vis-à-vis the private respondents 3 to 5 in OA No.240/2016 as regards their promotions from the post of ASW to SW and from SW to SW (NFSG). The same is noticed hereunder:

	<u>APPLICANT</u>	<u>R-3</u>	<u>R-4</u>	<u>R-5</u>
ASW [Re-designated as AEE (QS&C)]	21.06.1997	21.08.1997	19.09.1997	31.08.1998
SW [Re-designated as EE (QS&C)]	24.06.2004 (after he qualified the Direct Final Examination of Surveyors in the year	18.02.2002 (Vide panel dated 21.06.2001 as admitted by the applicant in para 4.6 of	13.11.2002 (Vide panel for the year 1998-2000 as admitted by the applicant in para 4.6 of	25.02.2003 (Vide panel for the year 1998-2000 as admitted by the applicant in

	2003)	the OA)	the OA)	para 4.6 of the OA)
SW (NFSG) [Redesignated as EE (QS&C) (NFSG)]	24.062009 (By order dated 14.02.2011)	18.02.2007 (By order dated 28.03.2009)	13.11.2007 (By order dated 28.03.2009)	25.02.2008 (By order dated 28.03.2009)

He has further pointed out that between 2005 and 2012 as many as five seniority lists were notified and the applicant was shown junior to the private respondents in all these seniority lists. The details of the seniority lists and the seniority position of the applicant and the private respondents in OA No.240/2016 are as under:

<u>Date of the seniority list</u>	<u>Applicant</u> (OA-240/16)	<u>R-3</u>	<u>R-4</u>	<u>R-5</u>
21.03.2005	39	26	27	25
12.04.2007	36	23	24	22
29.04.2008	35	22	23	21
19.01.2011	29	16	17	15
12.01.2012	28	15	16	14

Insofar as the position of the applicants in OA Nos.1815/2013 and 2176/2013 *qua* the private respondents reflected in the aforesaid seniority lists is concerned, the same is as under:

Date of Seniority List	OA No.1815/2013				R-3	R-4
	Applicant No.					
	1	2	3	4		
21.03.2005	29	30	34	36	19	23
12.04.2007	26	27	31	33	18	20
29.04.2008	25	26	30	32	17	19
19.01.2011	19	20	24	26	11	13
12.01.2012	18	19	23	25	11	12

Date of Seniority List	OA No.2176/2013			R-3	R-4
	Applicant No.				
	1	2	3		
21.03.2005	39	-	40	24	25
12.04.2007	36	49	37	21	22

29.04.2008	35	47	36	20	21
19.01.2011	29	41	30	14	15
12.01.2012	28	40	29	13	14

The position as reflected in seniority list dated 25.02.2013 as on 01.01.2013 is as under:

<u>Applicant</u> (OA-240/16)	<u>R-3</u>	<u>R-4</u>	<u>R-5</u>
28	16	17	15

OA No.1815/2013				R-3	R-4
Applicant No.					
1	2	3	4		
18	19	23	25	12	13

OA No.2176/2013			R-3	R-4
Applicant No.				
1	2	3		
28	39	29	14	55

9. The *inter se* seniority position of the applicants and the private respondents in all these OAs in the seniority lists of 2005, 2007, 2008 and 2011 was no different as all the applicants were shown junior to the private respondents in each case. The final position has been now reflected in the seniority list of 2012 dated 12.01.2012 and of 2013 dated 25.02.2013, noted hereinabove. It is contended that the applicants not even filed any representation against any of the above five seniority lists and accepted their seniority position *qua* the private respondents not only in the rank of ASW but as SW and SW (NFSG) for a period of over 15 years. The applicant Pankaj Kumar Pathak made his first representation on 09.09.2015 after the seniority list dated 25.02.2013 was issued, wherein also he was shown as junior

to the private respondents. It is this seniority list that is subject matter of challenge in the connected OA No.2176/2013 filed by this applicant and two others. Respondents' further contention is that the applicants have all along remained totally unconcerned about their alleged service rights. According to Mr. Behera, the first judgment on the equivalence of qualification was delivered by the Chandigarh Bench in the case of *R. K. Gupta* (supra) on 15.11.1996, and thereafter by the High Court of Punjab & Haryana on 18.10.2001, by the Full Bench of Principal Bench of this Tribunal on 03.03.2003, and by the Delhi High Court on 15.12.2010. The applicants chose not to challenge the seniority position of the private respondents even when they were promoted twice during this period. Present Applications, according to Mr. Behera, are hopelessly barred by time. The applicants were fence-sitters and cannot be shown any indulgence by the Tribunal.

10. One detailed counter affidavit has been filed in OA No.2176/2013. The official respondents have also sought dismissal of the OAs on the ground of limitation, delay and laches. According to the official respondents, the private respondent No.3 Manoj Kumar Gupta was promoted to the post of SW [now Executive Engineer (QS&C)] in the year 2001, whereas respondent No.4 Akhilesh Shukla

was promoted vide review DPC dated 05.12.2002. Insofar as the factual details are concerned, same are not in dispute.

11. It is contended on behalf of the applicants that the right to be considered for promotion is a fundamental and valuable right and thus the applicants cannot be deprived of the right to be considered for promotion on misinterpretation and misconstruction of statutory provisions. The applicants have placed reliance upon various judgments.

12. In *T. Aruna & others v Secretary, A.P. Public Service Commission & others* [(2001) 9 SCC 54, the Hon'ble Supreme Court held:

“11. The counsel for the appellants urged that some of the appellants who were given promotion to the cadre of Senior Superintendents long back and subsequently to still higher cadres are to be reverted to lower category in view of the directions contained in the impugned judgment. It was submitted that promotions effected long back should not be disturbed as they were not challenged. Admittedly, the Commission was not following any rule and the promotions were effected based on a policy. No seniority list was published either. The affected parties got the opportunity to challenge these promotions only when a seniority list was published in 1996. Under the above circumstances, the reasons for delay, if any, cannot be put at the door of the respondents who were seriously affected by the way in which promotions were being done. We are, however, told that seniority list has now been finalised after giving due consideration to the individual representation.”

In *Kanailal Bera v Union of India & others* [(2007) 11 SCC 517], the Hon'ble Supreme Court was considering the question of delay in filing writ petition. The order of dismissal was passed in the year 1994, and the appeal against the said order came to be dismissed on 05.04.1995. Writ petition challenging the dismissal was filed in the year 1997. The Hon'ble Supreme Court found the order of the disciplinary authority flawed, and keeping in view the peculiar circumstances of the said case, exercised jurisdiction under Article 142 of the Constitution and passed the following order:

“9. Fifteen years, however, in the meantime have elapsed. Ordinarily, although, we would not interfere with the quantum of punishment but keeping in view the fact that the disciplinary authority must be held to have misdirected itself by not complying with Rule 27 of the Central Reserve Police Force Rules *stricto sensu* and having directed a further inquiry after ordering for the dismissal of services of the appellant, we are of the opinion that in the peculiar facts and circumstances of this case which may not be treated to be a precedent, we shall pass an appropriate order in exercise of our discretionary jurisdiction under Article 142 of the Constitution of India.”

The applicants have further relied upon a Full Bench judgment of the Delhi High Court in *S. P. Dubey etc. v Municipal Corporation of Delhi & others* [2003 (5) SLR 342 (Del)]. Reliance is placed upon paras 44 and 45. Same are reproduced hereunder:

“44. In a case where the fundamental right of a person, by reason of a wrong interpretation of statute

would be taken away, which would render a decision a nullity, cannot operate as *res judicata*.

45. A candidate in terms of Article 16 of the Constitution of India does not have a right of promotion but he has the fundamental right to be considered therefor. Right to be considered in terms of Article 16 would embrace within its fold consideration in accordance with law and in a fair, just and equitable manner. If a candidate is deprived of his right to be considered for promotion on a mis-interpretation and misconstruction of a statutory provision the same in the aforementioned situation would attract the wrath of Article 16 and on that ground also an earlier decision would not attract the principle of *res judicata*."

13. Based upon ratios of the aforesaid judgments it is sought to be emphasised by the applicants before us that firstly the applicants have been denied promotion and seniority from ASW to SW on account of misinterpretation of the statutory rules, and secondly the judgment delivered in *R. K. Gupta's* case (supra) by the Chandigarh Bench of the Tribunal upheld by the Punjab & Haryana High Court, and the Full Bench judgment of the Tribunal in OA No.1290/2001 upheld by the High Court of Delhi in WP(C) No.6365/2003, and finally the judgment of the Apex Court dismissing the SLP dated 04.08.2015 in Civil Appeal No.5944/2015, are all judgments in *rem* and thus they would *ipso facto* apply to the claim of the applicants, undeterred by the delay and laches, and thus the applicants are entitled to be placed over the private respondents in the seniority as they were illegally denied promotion from ASW to SW allowing juniors to steal a march, resulting in injustice to them.

14. It is further contended that once a person is found to be entitled to similar relief, it is not necessary for him to approach the court, and relief to all similarly situated persons must flow from the judgment notwithstanding the fact that they did not approach the Court/Tribunal. To support this contention, the applicants have relied upon the judgment of the Hon'ble Supreme Court in *K. I. Shephard v Union of India & others* [(1987) 4 SCC 431].

15. To the contrary, Mr. Behera, learned counsel appearing for private respondents 3 to 5 in OA No.240/2016 has vehemently opposed the contention of the applicants for grant of relief at this belated stage. According to him, the cause of action to seek remedial measures arose to the applicants when for the first time they were superseded for promotion from ASW to SW in the year 2001 and 2002, particularly when the question of equivalence of qualifications had already been declared by the Chandigarh Bench of the Tribunal in *R. K. Gupta's* case (supra) as far back as on 15.11.1996. The said judgment was available when the applicants were allegedly denied promotion on account of misinterpretation of the rules. According to Mr. Behera, the Punjab & Haryana High Court reiterated the view of the Tribunal in *R. K. Gupta's* case vide its judgment dated 18.10.2001, and thus the applicants should have been aware of the said judgment and law laid down, or at least when the Full Bench of the Tribunal

delivered its judgment on 03.03.2003 in OA No.1290/2001 and connected matters, holding the degree in engineering a valid and equivalent qualification to the passing of the examination of the Institution of Surveyors. His further contention is that right from 2001-02 the private respondents have earned two promotions in between, all to the knowledge of the applicants; as many as five final seniority lists have been published indicating the *inter se* seniority amongst the applicants and the private respondents, but the applicants chose not to challenge the same and at this belated stage the settled seniority of the private respondents for almost a period of fifteen years cannot be disturbed. Mr. Behera has relied upon various judgments. Reference to the same shall be made hereinafter. Before that, it is deemed necessary to analyse the judgments relied upon by the applicants in support of their contention.

16. Insofar as the factual submissions of the applicants are concerned, there is no dispute firstly to the question that the initial denial of promotion to the applicants from ASW to SW was based upon misinterpretation of recruitment rules, which resulted in grant of promotion to the private respondents as SW. There is also no denial to the fact that the judgments in *R. K. Gupta's* case (*supra*) and later by the Punjab & Haryana High Court and Full Bench of this Tribunal, finally upheld by the Apex Court, are based upon

interpretation of rules, same cannot be confined to the parties to the *lis*; the judgments must be taken to be judgments in *rem*. However, the question of limitation, delay and laches would still remain even in cases where the judgment is in *rem* and there is lacklustre and lackadaisical approach on the part of the individuals who chose to keep mum and remain silent to the invasions of their rights for years together, and allow their competitors/juniors to steal a march over them, and chose to wake up from their slumber one day when much water has flown over their heads. Would they be entitled to indulgence from the Court/Tribunal merely on account of the infraction of their rights affecting their service career? Before we answer this question, the judgments relied upon by the applicants need to be appropriately understood and analysed, as noticed hereinabove.

17. In *T. Aruna's* case (*supra*) Typists, one of the feeder categories, were denied promotion to the cadre of Senior Assistant. The Tribunal and finally the Hon'ble Supreme Court found that they were arbitrarily denied promotion and ordered fixation of their seniority and promotion even by demotion of promotes. The plea of the respondents of delay in challenge was rejected primarily on the ground that no seniority list was published, and the affected parties got the opportunity to challenge the promotion only when seniority

list was published. In *Kanailal Bera* (supra) the question that fell for consideration of the Apex Court was delay in challenging the dismissal order which came to be challenged in 1997, whereas dismissal was ordered in 1995. In this case, the Hon'ble Supreme Court in para 9 referred to hereinabove exercised its extraordinary jurisdiction under Article 142 of the Constitution of India and also held that relief is being granted under the peculiar facts and circumstances of the said case which may not be treated to be a precedent. In the Full Bench judgment relied upon by the applicants in *S. P. Dubey's* case (supra), the Hon'ble High Court held that a judgment based upon misinterpretation of rules cannot operate as *res judicata*. All the above judgments do not come to the rescue of the applicants in any manner for the reasons to be referred in the later part of this judgment.

18. In *Bhoop Singh v Union of India & others* [(1992) 3 SCC 136], a large number of constables in the Delhi Armed Police were terminated from service for participating in mass agitation in 1967. Some of the dismissed constables were taken back in service as fresh entrants by the Government on some representation by Members of Parliament. Some of the dismissed constables who were not taken back in service even as fresh entrants filed writ petitions in the Delhi High Court. In 1969-70 these petitions were allowed and setting

aside their termination they were directed to be taken back in service on the same analogy. Petitioner Bhoop Singh who was also one of the dismissed constables, filed OA in the Tribunal in the year 1989, i.e., after lapse of 22 years. The Tribunal rejected his Application on the ground of inordinate delay in absence of cogent explanation. The order of the Tribunal was upheld by the Hon'ble Supreme Court. Relevant observations of the Apex Court are reproduced hereunder:

“6. The petitioner was appointed in 1964 and his service terminated after about three years in 1967. It is in 1989 after a lapse of about twenty-two years from the date of termination of his service that the petitioner chose to assail his dismissal, notwithstanding the fact that some of the dismissed constables challenged their dismissal as early as 1969 and 1970, within a period of two to three years, and others too did so soon after the success of the first batch in getting reinstated. No attempt has been made by the petitioner to explain why he chose to be silent for so long, if he too was interested in being reinstated and had not abandoned his claim, if any. 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.

7. It is expected of a Government servant who has a legitimate claim to approach the Court for the relief he seeks within a reasonable period, assuming no fixed period of limitation applies. This is necessary to avoid dislocating the administrative set-up after it has been functioning on a certain basis for years. During the interregnum those who have been working gain more

experience and acquire rights which cannot be defeated casually by lateral entry of a person at a higher point without the benefit of actual experience during the period of his absence when he chose to remain silent for years before making the claim. Apart from the consequential benefits of reinstatement without actually working, the impact on the administrative set-up and on other employees is a strong reason to decline consideration of a stale claim....”

“8. There is another aspect of the matter. Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that belief. This is more so in service matters where vacancies are required to be filled promptly. A person cannot be permitted to challenge the termination of his service after a period of twenty-two years, without any cogent explanation for the inordinate delay, merely because others similarly dismissed had been reinstated as a result of their earlier petitions being allowed. Accepting the petitioner's contention would upset the entire service jurisprudence and we are unable to construe *Dharampal*[(1990) 4 SCC 13 : 1990 SCC (L&S) 568 : (1990) 14 ATC 831] in the manner suggested by the petitioner. Article 14 or the principle of non-discrimination is an equitable principle and, therefore, any relief claimed on that basis must itself be founded on equity and not be alien to that concept. In our opinion, grant of the relief to the petitioner, in the present case, would be inequitable instead of its refusal being discriminatory as asserted by learned counsel for the petitioner....” (*Emphasis supplied*).

In *Jagdish Lal v State of Haryana* [(1997) 6 SCC 538], the Hon’ble

Supreme Court held as under:

“18.this Court has repeatedly held, the delay disentitles the party to the discretionary relief under

Article 226 or Article 32 of the Constitution. It is not necessary to reiterate all the catena of precedents in this behalf. Suffice it to state that the appellants kept sleeping over their rights for long and elected to wake up when they had the impetus from *Virpal Chauhan* [*Union of India v. Virpal Singh Chauhan*, (1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813] and *Ajit Singh* [(1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239 : JT (1996) 2 SC 727] ratios. But *Virpal Chauhan* [*Union of India v. Virpal Singh Chauhan*, (1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813] and *Sabharwal* [*R.K. Sabharwal v. State of Punjab*, (1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] cases, kept at rest the promotion already made by that date, and declared them as valid; they were limited to the question of future promotions given by applying the rule of reservation to all the persons prior to the date of judgment in *Sabharwal case* [*R.K. Sabharwal v. State of Punjab*, (1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] which required to be examined in the light of the law laid in *Sabharwal case* [*R.K. Sabharwal v. State of Punjab*, (1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481]. Thus earlier promotions cannot be reopened....." (*Emphasis supplied*).

In *Malcom Lawrence Cecil D'Souza v Union of India* [(1976) 1 SCC 599], the Apex Court held:

"9.It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time." (*Emphasis supplied*).

This view was reiterated in *K. R. Mudgal & others v R. P. Singh & others* [(1986) 4 SCC 531], and *Shiba Shankar Mohapatra & others v State of Orissa & others* [(2010) 12 SCC 471].

19. The question of delay and laches assumes significance on account of inaction on the part of the challenger with the passage of time despite a right having been accrued to him. Indisputably, the applicants were superseded for promotion from ASW to SW in the years 1998, 2000 and 2000-2004, as is evident from the promotion orders, of course, on account of interpretation of the rules at the relevant time, which interpretation was subsequently found to be wrong. The question of equivalence of qualifications held by the applicants, i.e., degree in engineering, which they admittedly possess, with that of the passing of the final examination of the Institution of Surveyors for purposes of promotion from the post of ASW to SW, was subject matter of interpretation even though the UPSC as early as on 30.01.1994 and the Ministry of Human Resources Development, Department of Education on 21.01.1995 acknowledged that the degree in civil engineering of a university is equivalent to the final examination of the Institution of Surveyors, nonetheless the departmental authorities misinterpreted the recruitment rules of 1985 as replaced in 2005 and deprived the persons having degree in engineering of consideration for promotion to the post of SW, as

against those who had qualified the final examination of the Institution of Surveyors. However, as and when some of the applicants who were engineering graduates passed the final examination of the Institution of Surveyors, also got promotion, for example applicant Pankaj Kumar Pathak got promotion to the post of SW in 2003. He also earned further promotion to the post of SE (QS&C), though the private respondents on account of their earlier promotion as SW were always ahead of him as also other applicants, having been promoted earlier in point of time on the basis of their having passed the final examination of the Institution of Surveyors. Various seniority lists of ASW/SW [EE (QS&C)] were published in the years 2005, 2007, 2008, 2011, 2012 and 2013. All these seniority lists were final in nature. The applicants never challenged their seniority positions *qua* the private respondents in all these seniority lists except the last one, i.e., 2013. It is pertinent to note that the first judgment on the issue came to be delivered by the Chandigarh Bench of this Tribunal in *R. K. Gupta's* case (supra) on 15.11.1996. This judgment was adopted by the Chandigarh Bench in *Sunil Vishnupant Mane* (supra) and *Avinash Chander Dutta* (supra). The writ petition filed before the High Court of Punjab & Haryana was also decided vide judgment dated 18.10.2001 approving the judgment in *R. K. Gupta's* case. Later a Full Bench of this Tribunal reiterated the view in *R. K. Gupta's* case in its judgment dated 03.03.2003 in OA

No.1290/2001 and connected matters. Even though all these judgments were available, the applicants chose not to approach the Tribunal for redressal of their grievance by way of challenging the promotion of the private respondents or their seniority positions as reflected in the aforementioned seniority lists. It was only when the last seniority list was published on 25.02.2013 indicating the seniority position as on 01.01.2013 that the present Applications have been filed, the first two Applications, i.e., OA No.1815/2013 and 2176/2013 in the year 2013, and the last one 240/2016 in the year 2016. From the perusal of the reliefs noted hereinabove, we find that the applicants have not only challenged the promotions of the private respondents made as far back as in the years 1998-2000, 2001 and 2002-2004 to the post of EE (QS&C) but also their subsequent promotion as SE and their seniority, meaning thereby that they tend to challenge the orders passed in the years 1998-2000, 2001 and 2002-2004 when the private respondents were promoted. The Chandigarh Bench had already laid down the correct interpretation of the rules in 1996 and the High Court of Punjab & Haryana in 2001, and the Full Bench of the Tribunal at Delhi in the year 2003. Even in one matter pending before the Delhi High Court the respondents were allowed to make promotions as far back as in the year 2010, the applicant still chose not to move till 2013. What to say of making a motion to the competent Tribunal or the Court for enforcement of their alleged

rights, not even a single representation was filed by the applicants against promotions of the private respondents right from 1998 till 2015. The first representation was filed by the applicant Pankaj Kumar Pathak only on 09.09.2015, i.e., after a period of 13 to 15 years from the date of his first supersession. Even when the first seniority list was published on 21.03.2005, no objections were raised and the same position continued in respect of subsequent four seniority lists. The first representation was made only against the last final seniority list published in 2013, and thereafter the two OAs were filed before this Tribunal. The private respondents have earned two promotions during the *interregnum*, as noticed hereinabove. Their seniority position has remained intact as Executive Engineer for almost 15 years and as Superintending Engineer for a considerable period of time without being challenged or called in question in any manner. There is no application for condonation of delay in any of the OAs either, rather a declaration is made in para 3 of each OA to the effect that the OA is within the period of limitation as prescribed under Section 21 of the Administrative Tribunals Act.

20. Under these circumstances, the claim of the applicants that in the case of violation of their Fundamental Right of consideration for promotion and the judgment of interpretation of rules being in *rem*, they are not required to challenge the seniority

and promotions is not sustainable in law. Articles 14 and 16, besides conferring the Fundamental Rights, are also equitable in nature. No person can be permitted to take refuge under these constitutional provisions for his own default or inaction and against the equity and public policy. Equality has to be amongst equals. The applicants were sitting comfortably when others were taking part in the competitive race. They were just silent spectators without any attempt to participate, and at the end of the race they cannot be permitted to plead denial of their rights or equality with those who have stolen a march over them. This is the cardinal principle of law even in cases where there has been infraction of Fundamental Rights. As held by the Hon'ble Supreme Court in *Bhoop Singh's* case (supra), Article 14 or the principle of non-discrimination embodied therein is an equitable principle. The delay definitely defeats the right of those who are fence-sitters and keep on watching the events and tend to jump into the fray at the final stage. This is the spirit of the judgments of *R. K. Mudgal* (supra) and *Shiba Shankar Mohapatra* (supra).

21. Section 21 of the Administrative Tribunals Act prescribes a period of one year as limitation from the date of final order to challenge the order/action, and where an appeal or representation is made, an additional six months, if no order is made thereon.

22. In *D. C. S. Negi v Union of India and others* [CC No.3709/2011] decided on 07.03.2011, the Hon'ble Supreme Court held that it is the duty of the Tribunal to first consider whether the application is within limitation.

23. The controversy has now been set at rest by the Apex Court in case of *State of Uttar Pradesh & others v Arvind Kumar Srivastava* [(2015) 1 SCC 347]. The facts of the case before the Hon'ble Supreme Court were that advertisement was made for the posts of Homoeopathic Compounder and Ward Boys, which were Class-III and Class-IV posts. Selection was completed, and those who were in the select list were offered appointments. Some of the selected candidates did not join whereupon waiting list was being operated upon. Some of the candidates from the waiting list were offered appointment by the CMO, Varanasi. Before they could join, new CMO assumed charge and blocked their joining, and thereafter cancelled the appointments made by his predecessor from the waiting list. Some of the aggrieved filed suit in the Court of City Munsif, Varanasi challenging the order of cancellation, and some of them filed petitions before the Tribunal. The Tribunal allowed the petitions and judgment of the Tribunal was confirmed by the High Court in writ petition. The State of Uttar Pradesh filed SLP before the Hon'ble Supreme Court. The said SLP was dismissed in the year

1994. It was after dismissal of the SLP some candidates whose appointments were cancelled approached the authorities seeking appointments claiming parity, on the strength of the judgment of the Tribunal in 1995. Their claims were, however, rejected. They approached the Tribunal in 1996. The Tribunal allowed their claims on the ground that they were in the same positions in which other successful candidates were given relief. The High Court also adopted the view of the Tribunal. In SLP, the Hon'ble Supreme Court noticed the following for its consideration:

"8. The moot question which requires determination is as to whether in the given case, approach of the Tribunal and the High Court was correct in extending the benefit of earlier judgment of the Tribunal, which had attained finality as it was affirmed till the Supreme Court. Whereas the appellants contend that the respondents herein did not approach the court in time and were fence-sitters and, therefore, not entitled to the benefit of the said judgment by approaching the judicial forum belatedly. They also plead some distinguishing features on the basis of which it is contended that the case of the respondents herein is not on a par with the matter which was dealt with by the Tribunal in which order dated 22-6-1987 was passed giving benefit to those candidates who had approached the court at that time. On the other hand, the respondents claim that their case is identical to those who had filed the application before the Tribunal inasmuch as appointments of the respondents were also cancelled by the same order dated 22-6-1987 and, therefore, there is no reason to deny the same treatment which was meted out to the said persons, as denial thereof would amount to invidious discrimination which is anathema to the right of equality enshrined under Article 14 of the Constitution of India."

On consideration of various judgments on the question of delay and laches, equality, applicability of the judgment in *rem* and other related issues, the Hon'ble Supreme Court held as under:

“22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.

22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in *rem* with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the

authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see *K.C. Sharma v. Union of India* [*K.C. Sharma v. Union of India*, (1997) 6 SCC 721 : 1998 SCC (L&S) 226]). On the other hand, if the judgment of the court was in *personam* holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

23. Viewed from this angle, in the present case, we find that the selection process took place in the year 1986. Appointment orders were issued in the year 1987, but were also cancelled vide orders dated 22-6-1987. The respondents before us did not challenge these cancellation orders till the year 1996 i.e. for a period of 9 years. It means that they had accepted the cancellation of their appointments. They woke up in the year 1996 only after finding that some other persons whose appointment orders were also cancelled got the relief. By that time, nine years had passed. The earlier judgment had granted the relief to the parties before the Court. It would also be pertinent to highlight that these respondents have not joined service nor working like the employees who succeeded in earlier case before the Tribunal. As of today, 27 years have passed after the issuance of cancellation orders. Therefore, not only was there unexplained delay and laches in filing the claim petition after a period of 9 years, it would be totally unjust to direct the appellants to give them appointment as of today i.e. after a period of 27 years when most of these respondents would be almost 50 years of age or above."

24. In the aforesaid judgment of the Apex Court, the entire gamut of the issue has been thoughtfully considered and adjudicated upon. In the light of the facts and law discussed hereinabove, the

applicants cannot be granted the relief at this belated stage. To interfere in the promotions and seniority of the private respondents at this stage would itself be iniquitous. These Applications deserve to be dismissed on account of inordinate delay, laches and acquiescence . Ordered accordingly. No order as to costs.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/as/