

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA No. 4550/2013

OA No. 20/2014

OA No. 1751/2014

OA No. 1753/2014

Order Reserved on: 13.10.2015

Pronounced on: 09.12.2015

Hon'ble Mr. B.P.Katakey, Member (J)

Hon'ble Mr. V.N. Gaur, Member (A)

OA No.4550/2013

Manoj Kumar Jha

S/o Shri shiv Shankar Jha,

Working as LDC, Eastern Division-5, DDA,

Dilshad Garden, Delhi

R/o P-16/C-1, Dilshad Garden, Delhi.

- Applicant

(By Advocate: Sh.Himanshu Arora and Sh. D.S.Mahendru)

Versus

Delhi Development Authority & ors. Through

1. Vice Chairman

DDA, Vikas Sadan,

I.N.A., New Delhi.

2. The Commissioner (Pers.),

Delhi Development Authority,

Vikas Sadan,

I.N.A., New Delhi.

3. The Deputy Director (PB-III),

DDA, B-Block, Vikas Sadan

I.N.A., New Delhi.

4. Sh. Virender Kumar, Telephone Operator,

S/o Sh. Mangat Ram,

R/o Flat No.6, LIG Flat,
Rajouri Garden,
New Delhi.

5. Sh. Krishan Prasad, Peon,
S/o Sh. Billi Ram Sharma,
R/o HP-98, Pitampura,
Delhi-110034.

- Respondents

(By Advocate: Ms. Anju Bhushan Gupta Sh. Arun Birbal
and Sh. M.K. Bhardwaj)

OA No.20/2014

Raj Kumar
S/o Shri Trilok Chand,
R/o H.No. B-40, Gali No.16A,
Near Nalanda Public School,
Molarband Extn. Badarpur,
New Delhi-44.

- Applicant

(By Advocate: Sh. Yogesh Sharma)

Versus

Delhi Development Authority & ors. Through

1. Vice Chairman
DDA, Vikas Sadan,
I.N.A., New Delhi.
2. The Commissioner (Pers.),
Delhi Development Authority,
Vikas Sadan,
I.N.A., New Delhi.
3. The Deputy Director (P-III),
Delhi Development Authority,
Room No. B-316, Personnel Branch,
Vikas Sadan
New Delhi.

- Respondents

(By Advocate: Ms. Anju Bhushan Gupta, Sh. Arun Birbal)

OA No.1751/2014

Ajeet Singh, aged 51 years
s/o Sh. JatanSwarup,
working as LDC in DDA,
r/o Vill. & P.O.Bhanota,
Distt. G.B.Nagar (UP).

- Applicant

(By Advocate: Sh. Yogesh Sharma)

Versus

Delhi Development Authority & ors. Through

1. Vice Chairman
DDA, Vikas Sadan
I.N.A., New Delhi.
2. The Commissioner (Pers.),
Delhi Development Authority,
Vikas Sadan
I.N.A., New Delhi.
3. The Deputy Director (P-III),
Delhi Development Authority,
Room No. B-316, Personnel Branch,
Vikas Sadan
New Delhi.

- Respondents

(By Advocate: Sh.Arun Birbal)

OA No.1753/2014

G.V.Subramaniam
s/o Sh. V.G.K.Iyer
r/o 149E, Sarpunch Bara,
Near Lakhi Public School,
Mandwali, Delhi-92.

- Applicant

(By Advocate: Sh. Yogesh Sharma)

Versus

Delhi Development Authority &ors. Through

1. Vice Chairman
DDA, Vikas Sadan
I.N.A., New Delhi.
2. The Commissioner (Pers.),
Delhi Development Authority,
Vikas Sadan
I.N.A., New Delhi.
3. The Deputy Director (P-III),
Delhi Development Authority,
Room No. B-316, Personnel Branch,
Vikas Sadan,
New Delhi.

- Respondents

(By Advocate: Sh. Arun Birbal)

ORDER

Hon'ble Shri V.N.Gaur, Member (A)

The applicants in these four OAs have received show cause notices (SCNs)/order for being reverted to the posts of Peon from the post of LDC to which they were promoted in the year 2007 against 15% quota for promotion of Group-D employees on the basis of limited departmental examination. Since the issue to be adjudicated in these OAs have common origin in respondent's admission of erroneous promotion given to the applicants in the year 2007, these were taken up together for hearing with the consent of the learned counsels of both the sides.

OA No.4550/2013

2. The applicant in this case, a regular Group-D employee appeared in the departmental written examination on 12.07.2003 for promotion to the post of LDC against 15% of the vacancies which according to the Recruitment Rules (RRs) were to be filled up from amongst the Group-D regular staff on the basis of Limited Departmental Examination maintaining the inter-se-seniority among the qualified candidates. In the departmental examination 60 unreserved and 13 SC category candidates qualified. The respondent-department promoted 38 candidates against unreserved vacancies, including the applicant being at Sl no. 38, vide order dated 16.08.2007. Later, one Sh. Kanchhi Lal and two others filed OA No.139/2010 seeking direction for their promotion to the post of LDC on the ground that one of their juniors, i.e. the applicant in the present OA, had been promoted to the post of LDC in the aforementioned order. The OA was disposed of on 17.11.2011 with a direction to the respondent-department to correct the error by following due process of law. The respondent-department issued SCN to the applicant on 24.01.2012, and in the meantime promoted Sh. Kanchhi Lal to the post of LDC vide order dated 30.07.2012. The applicant asked for certain documents to enable him to respond to the SCN which was provided to him by letter dated 21.06.2013. The applicant submitted his reply on 05.07.2013. The respondent-department issued an order dated

09.12.2013 reverting the applicant to the post of Peon. However, the same was stayed in the present OA.

3. The applicant has filed this OA with the following prayer:

- (a) Quash and set aside the impugned order dated 09.12.2013;
- (b) Direct the Respondents to allow the applicant to work on the post of LDC with all consequential benefits;
- (c) Pass such further order or orders which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

4. Learned counsel for the applicant in his submission stated that the order of reversion passed by the respondent-department was illegal and contrary to the law as the applicant had no role in preparation of the result of the departmental examination held in 2003 or in the promotions effected by order dated 16.08.2007. In accordance with the condition mentioned in the promotion order the applicant successfully completed the probation period of 2 years in 2009 and now he has completed about 8 years of service as LDC without any blemish or complaint about his performance. At this stage, it was not only unfair but also contrary to the law as laid down in various judgments of Hon'ble Supreme Court to revert him to a lower position. The respondent-department have issued the SCN with a pre-determined mind, only as a formality, before reverting him to a lower post, as the same has been issued following the direction of this Tribunal in OA-139/2010. He further pointed out that this Tribunal had passed the order in OA-139/2010 without hearing the present applicant as he was not a party to the case. The applicant was

neither impleaded in that OA nor had any case ever been filed challenging the promotion of the applicant. The applicant had earlier approached this Tribunal in OA No.4453/2012 which was disposed of by order dated 20.12.2013 directing the respondents not to take any adverse action against the applicant in terms of the proposal in the SCN till the decision on his representation. The respondent-department, however, flouted the order of the Tribunal by issuing a backdated letter dated 9.12.2013 reverting him to the post of Peon which was received by the applicant by Post on 24.12.2013. The applicant had also become eligible for the post of UDC and applied for appearing in departmental examination for promotion under limited departmental examination quota.

5. Learned counsel relied on **K. Ajit Babu & others Vs. UOI & others**, 1998 (1) SLJ SC 85, **Barkhoo Ram vs. UOI**, 2002 (65) DRJ 778 and **P.S.Sadasivaswamy vs. State of Tamil Nadu**, (1975) 1 SCC 152.

OA Nos. 20/2014, 1751/2014 & 1753/2014 –

6. The applicants in these OAs were also regular Group-D employees working under the respondents and appeared in the limited departmental examination conducted on 12.07.2003 for promotion to the post of LDC under 15% quota. In the result declared on 03.08.2007, the names of these applicants, namely, Raj Kumar, Ajeet

Singh and G.V.Subramaniam appeared at Sl. Nos. 37, 49 and 31 respectively in the list of 52 candidates who qualified in the examination. It is relevant to note here that though no averment has been made by either side in respect of the category to which the applicant in OA 1751/2014 (Ajeet Singh) belongs, in the para 2 of the order dated 03.08.2007 i.e. result of the departmental examination held on 12.07.2003, it is mentioned that:

“The official at S. No. 39 to 52 belong to reserved (illegible) category and have qualified at relaxed standard.”

7. The respondents issued an order on 16.08.2007 promoting 52 candidates, including the candidates against 38 unreserved vacancies, to the post of LDC on officiating basis with a probation period of 2 years. Following the order passed by this Tribunal in OA No.139/2010 filed by Sh. Kanchhi Lal, the respondents conducted a recheck of the seniority list of the persons who were appointed vide order dated 03.08.2007 and found that there were a few errors in that order which had to be corrected. Accordingly, SCNs were issued to the applicants in these OAs as well on 13.09.2013 to be replied within 15 days. The applicants approached the respondents with a request to provide copies of certain documents that would enable them to reply to the SCN. The respondents had supplied these documents to the applicants. However, in the meantime, the applicants approached this Tribunal and got a stay order on the SCN dated 30.09.2013. The three applicants at first jointly filed OA 20/2014 with MA 29/2014 for joining together. This Tribunal dismissed the MA 29/2014 for the

reason that individual SCNs were issued and these would have to be challenged separately. The two of the three applicants namely Ajeet Singh and G.V.Subramaniam later filed OA 1751/ 2014 and OA 1753/2014 respectively.

8. Learned counsel appearing for these applicants seconded the arguments of the learned counsel for the applicants in OA No.4550/2013 and added that respondents have conducted more limited departmental examinations after the one in 2003 and promoted the persons junior to the applicants. The applicants did not avail of these opportunities as they had already been promoted to the post of LDC. They have also appeared in the departmental examination for promotion to the post of UDC following the circular dated 21.08.2013 but their results are withheld due to pendency of the present OAs. Reverting them at this stage would make them work in the post of Peon when their juniors have been promoted to the post of LDC. He further submitted that the decision taken by this Tribunal in OA No.139/2010 was not a correct judgment as it gave observations, findings and directions against persons who were not impleaded as parties in that case, and therefore, the judgment in OA No.139/2010 was liable to be reviewed in the light of the law laid down in **K.AjitBabu&ors. Vs. Union of India &ors.**, 1998 (1) SLJ SC 85. Learned counsel also relied on **Director General of Posts &Ors. Vs. K.Chandrashekhar Rao**, 2013 (3) SCC 310, **Vikas Pratap Singh**

& ors. Vs. State of Chhattisgarh & Ors., 2013 (3) SLJ SC 155 and **HC Durgesh Kumar vs. GNCT of Delhi**, OA No.88/2007.

9. Addressing the arguments of the learned counsels in the abovementioned OAs, the learned counsel for the official respondents gave a brief background of the developments since the year 2002 and submitted that in OA No.139/2010 this Tribunal had examined the matter in detail and noted the submissions of the learned counsel for the respondents that Sh. Manoj Kumar Jha, applicant in OA No.4550/2013 was at Sty No.1918 of the seniority list while Sh. Kanchhi Lal, one of the applicants in OA No.139/2010 was at Sty. No.1836. It had also been noted that the respondents in OA 139/2010 had already prepared a note on 20.09.2011 stating that there was an error in the result dated 03.08.2007 as far as the official appearing at Sl. No.38 (Manoj Kumar Jha) was concerned and the case of Sh. Kanchhi Lal should have been considered after Sl. No.37. However, the respondents could not act upon that finding as the matter was *sub-judice*. This Tribunal had, keeping the above submissions in view, observed that once an error had been noticed by the respondents, it was incumbent upon them to have acted on their own to correct that error following the due process of law. The respondents also received representations from Sh. Virender Kumar, Peon that he was senior to Sh. Kanchhi Lal, who had been promoted to the post of LDC. The department, accordingly, after the disposal of OA No.139/2010 re-examined the record and found that there were some other officials in

the cadre of Peon who were senior to Sh. Kanchhi Lal and had cleared the examination held on 12.07.2003. They were eligible for promotion before Sh. Kanchhi Lal. It was, therefore, decided to revert Sh. Manoj Kumar and also Sh. Kanchhi Lal from the post of LDC after giving them SCNs and after considering the replies thereto promote the successful candidates in the examination held on 12.07.2003 in correct order. Like Sh. Manoj Kumar Jha, one Sh. S. K. Mishra who was junior to Sh. Kanchhi Lal, also got promoted and needed to be reverted. Quoting from the averments in the counter filed by the official respondents, the learned counsel stated that on re-examination of the record it was found that the following Group-D employees in unreserved category in the cadre of Peon were senior to Sh. Manoj Kumar (Sty. No.1918) and Sh. S.K.Mishra (Sty. No.1919):

(The number against the names indicate the position in the seniority list)

(i)	Sh. D.D.Saini	1828
(ii)	Sh. Virender Kumar	1829
(iii)	Sh. Krishan Prasad	1832
(iv)	Sh. Kanchhi Lal	1836 (promoted on 30.07.12 After order of CAT)
(v)	Sh. Suresh Kumar	1847
(vi)	Sh. A.K.Gupta	1877
(vii)	Sh. Baldev Raj	1887
(viii)	Sh. Rakesh Kumar	1889
(ix)	Sh. Surender	1896
(x)	Sh. Suresh Kumar	1908
(xi)	Sh. Balraj Sharma	1917

10. In addition to above, the following officials junior to one or more of the above mentioned officials were promoted to the post of LDC vide E.O.No.1036 dated 03.08.2007 under UR category.

- | | | |
|--------|------------------------|--|
| (i) | Sh. Bhagat Singh Rawat | 1831 |
| (ii) | Sh. Nagender | 1839 |
| (iii) | Sh. S.P.Sharma | 1853 |
| (iv) | Sh. ChanderBhan | 1866 |
| (v) | Sh. Raj Kumar | 1867 |
| (vi) | Sh. Ajeet Singh | 1882 (promoted vide E.O. No.1680 dt. 05.12.2007) |
| (vii) | Sh. G.V.Subramaniam | 1885 |
| (viii) | Sh. Manoj Kumar | 1918 |
| (ix) | Sh. S.K.Mishra | 1919 |

11. The above facts made it evident that as per the order of seniority, the following were to be promoted to the post of LDC in the order of their seniority.

- | | | |
|-------|---|---|
| (i) | Sh. D.D.Saini
No.323 dt. 28.02.2013) | 1828 (promoted vide E.O. No.323 dt. 28.02.2013) |
| (ii) | Sh. Virender Kumar | 1829 |
| (iii) | Sh. Bhagat Singh Rawat | 1831 (Promoted vide E.O. No.1036 dt. 03.08.2007) |
| (iv) | Sh. Krishan Prasad | 1832 |
| (v) | Sh. Kanchhi Lal | 1836 (Promoted vide E.O. No.1076 dt. 30.07.2012 Pursuant to order of CAT) |
| (vi) | Sh. Nagender | 1839 (promoted vide E.O. No.1036 dt. 03.08.2007) |

- | | |
|------------------------|---|
| (vii) Sh. Suresh Kumar | 1847 (promoted vide E.O.
No.323 dt. 28.02.2013) |
| (viii) Sh. S.P.Sharma | 1853 (promoted vide E.O.
No.1036 dt. 03.08.2007) |
| (ix) Sh. ChanderBhan | 1866 (promoted vide E.O.
No.1036 dt. 03.08.2007) |

12. Accordingly the respondents have issued SCN to the following to be reverted them after following due process of law.

- | | |
|---------------------------|------|
| (i) Sh. Raj Kumar | 1867 |
| (ii) Sh. Ajeet Singh | 1882 |
| (iii) Sh. G.V.Subramaniam | 1885 |
| (iv) Sh. Manoj Kumar | 1918 |
| (v) Sh. S.K.Mishra | 1919 |

13. After reversion of above named officials from the post of LDC, following officials are required to be promoted to the post of LDC considering their seniority position:

- | | |
|--------------------------|--|
| (i) Sh. D.D.Saini | 1828 (promoted vide
E.O.No.323 dt. 28.02.2013) |
| (ii) Sh. Virender Kumar | 1829 |
| (iii) Sh. Krishan Prasad | 1832 |
| (iv) Sh. Kanchhi Lal | 1836 (Promoted vide E.O.
No.1076dt. 30.07.2012 after
order of CAT) |
| (v) Sh. Suresh Kumar | 1847 (promoted vide E.O.
No.323 dt. 28.02.2013) |

14. The respondents, accordingly, issued SCNs to Sh Manoj Kumar Jha on 24.01.2012, and to Sh. Raj Kumar, Sh. Ajeet Singh, Sh.

G.V.Subramaniam and Sh. S.K.Mishra on 30.09.2013. Sh. S.K.Mishra has furnished reply to the respondents on 21.10.2013. Sh. Manoj Kumar Jha submitted his reply 05.07.2013 and after considering the same the department passed his reversion order on 09.12.2013. Other officials have obtained order of stay on SCN in their respective cases from this Tribunal.

15. Learned counsel submitted that the applicants have not pointed out any error in the SCNs issued by the respondents. The appointments of the applicants could take place because of an error on the part of the respondents which had been noticed at a later stage and which became part of the judicial pronouncement in OA No.139/2010. It is trite that the respondents were within their rights and acted in accordance with law of the land in taking steps to rectify the error and promote those candidates who were rightful claimant to vacancies of LDC available at that time on the basis of seniority. Referring to the contention of the applicants that in the period post 2007 the respondents had promoted a number of persons junior to the applicants to the post of LDC, learned counsel stated that while it was true that vide order dated 23.02.2013 some Group-D employees were promoted to the post of LDC under 10% quota and on 09.03.2015 83 persons were promoted under Limited Departmental Examination quota, the applicants cannot claim any benefit from these orders. According to the learned counsel in the promotion quota of 10%, the names of the applicants are yet to come in the zone of

consideration. As on date, candidates up to seniority no.1701 in the General category have been promoted while the senior most among the present applicants is at Sty. No.1867. With regard to the promotion in the departmental examination quota, learned counsel stated that the RRs for the post of LDC have since been amended in the year 2012 and 2013 and now 15% quota is to be filled up through Limited Departmental Competitive Examination which, in other words, would mean that the qualifying candidates will be promoted on the basis of the merit secured in that examination and not on the basis of the seniority in the feeder grade. With regard to the submission of applicants that they were allowed to appear in the departmental examination for promotion to the post of UDC, the learned counsel stated that respondents had given that permission with the condition that the appointment to the post of UDC on the basis of the departmental examination shall be subject to the outcome of the present OAs. This will not give them right to continue in the present post. Thus, the applicants have not been able to establish any illegality in the SCN/order passed by the respondents.

16. The private respondents namely, Sh. Virender Kumar and Sh. Krishan Prasad joined the proceedings after their MA 515/2014 in OA 4550/2013 was allowed by the Tribunal's order dated 28.04.2015. The private respondents have claimed that they were having higher seniority in the written examination held for promotion to the post of LDC on 12.07.2003 but their rights were denied, instead some

candidates who were junior to them were given appointment in the year 2007. Sh. M. K. Bhardwaj, Learned counsel appearing for the private respondents submitted that they had approached the respondents with representations dated 03.04.2013 and 07.10.2013 to rectify the situation but on not hearing from them for quite some time they filed OA No.4490/2013. On 24.12.2013 this Tribunal disposed of the OA with a direction to the respondents to consider and pass orders on those representations. The respondents in that OA on 11.02.2014 informed the private respondents that following the order in OA No.139/2010, entire matter had been examined and SCNs issued to persons who were wrongly promoted. However, these notices had been stayed by the Tribunal. The private respondents were informed that their request for the post of LDC will be considered after the outcome of OA No.20/2014.

17. Learned counsel argued that from the submissions of the respondents and finding of this Tribunal in OA No.139/2010 it was clear that injustice had been done to the private respondents where immediate corrective action was required to be taken. However, due to the pendency of the present OAs, the rights of the private respondents were getting denied. The learned counsel further submitted that after the observation made in OA No.139/2010 of this Tribunal there was no scope for entertaining the request of the applicants in the present OAs as it is an admitted fact that they had been wrongly promoted and have no right to continue in the same

position by denying the rightful claim to those who were senior in the list of successful candidates in the examination held on 12.07.2003.

18. The respondents relied on **Indian Council of Agricultural Research and another vs. T.K.Suryanarayan and others**, (1997) 6 SCC 766 and **Union of India vs. Narendra Singh**, (2008) 2 SCC 750.

19. We have heard the learned counsels and perused the record. In OA No.139/2010 this Tribunal passed the following order on 17.11.2011:

“20. Coming to the third point that Shri Manoj Kumar who was placed at Sl.No.38 in the order of promotion is junior to applicants No.2 and 1 it is an admitted position by the respondents that Shri Manoj Kumar, who was placed at Sl.No.38 in the impugned order was wrongly promoted, he being junior to applicants No.1 and 2. From the records it is clear Shri Kanchhi Lal should have been promoted as per seniority. In these circumstances, department should have taken the corrective step themselves without waiting for the orders of the court because once an error is detected, it should have been set right by following due process of law. The proper course would have been to give SCN to Shri Manoj Kumar explaining all the facts and calling upon him to state why he should not be reverted and after reverting him, the next person who was senior-most, which according to the respondents is Kanchhi Lal in this case, should have been promoted from the same date when Manoj Kumar was promoted. Of course, his pay could be fixed notionally because applicants have approached the court after a delay of over 2 years from the date when promotion order was issued on 3.8.2007. For reasons best known to the respondents, even after noting the error, final steps have not been taken.

21. In above facts, we would have quashed the promotion of Shri Manoj Kumar but since he has not been impleaded as a party, it would not be proper for us to quash the promotion order with respect to Shri Manoj Kumar. We, therefore, direct the respondents to correct their mistake by following due process of law as mentioned in para 20 above.

22. With the above direction, this OA stands disposed of. No order as to costs.”

20. The respondent-department scrutinised the seniority list and the result of the written examination issued in 2007, and came to the conclusion that S/Sh. Raj Kumar (1867), Ajeet Singh (1882), G.V.Subramaniam (1885), Manoj Kumar (1918) and S.K.Mishra (1919), who had been appointed by order dated 03.08.2007 will have to be reverted after following the due process of law and accordingly issued SCNs. In the meantime, subsequent to the order in OA No.139/2010, the respondents issued promotion order of Sh. Kanchhi Lal on 30.07.2012 but realised that he was also not the senior most as there were three more candidates above him namely, S/Shri DD Saini, Virender Kumar and Krishan Prasad, (the latter two are private respondents) who ought to have been considered for appointment. In addition, one more candidate Sh. Suresh Kumar, was among the left out candidates senior to Sh. Manoj Kumar. The respondents promoted Sh. D.D. Saini and Sh. Suresh Kumar on 28.02.2013.

21. The applicants have not questioned the above factual position that the 5 candidates, namely, S/Sh. D.D.Saini, Virender Kumar, Krishan Prasad, Kanchhi Lal and Suresh Kumar were senior to them and had also qualified in the same examination for promotion to the post of LDC, and therefore, had first claim over the available vacancies. The main argument of the applicants are that

- (i) If there was any error in the promotion given to them in the year 2007, they cannot be held liable for the

same. There is no allegation of any wrongdoing on their part that lead to erroneous appointments.

- (ii) They had successfully completed the probation of 2 years and could not be reverted at this stage.
- (iii) After having served for more than 8 years in that post and when they have applied or taken departmental examination for the next promotion, it will be unfair to revert them to the post of Peon.
- (iv) The respondents have conducted more Limited Departmental Examinations and promoted several of their juniors to the post of LDC after 2007 but having already been promoted to the post of LDC the applicants did not take those examinations.

22. We have considered these arguments. With regard to the fact that they are not responsible for any error that has been committed by the respondents in the past and they cannot be penalised for the same, we are of the view that the applicants cannot claim a right to the benefit that accrued to them by way of an error committed by the respondent-department at the time of granting promotion to the next higher post. It needs no emphasis that the respondents are duty bound to fill up posts by strictly following the RRs and if there was any deviation from the RRs, it would not confer any right on the beneficiary, more so, when such benefit was given to the applicants at the cost of some other candidates who were senior to them and

fulfilled the eligibility conditions. The respondents have relied on the case of **Indian Council of Agricultural Research**(supra) to contend that the service rules have to be strictly adhered to and it cannot be given a go by to protect erroneous promotions given in some cases. The Hon'ble Supreme Court observed thus:

“8. We are, however unable to accept the submission made by the learned counsel appearing in both these SLPs. Even if in some cases erroneous promotions had been given contrary to the said Service Rules and consequently such employees have been allowed to enjoy the fruits of improper promotion, an employee cannot base his claim for promotion contrary to the statutory Service Rules in law courts. Incorrect promotion either given erroneously by the department by misreading the said Service Rules or such promotion given pursuant to judicial order contrary to Service Rules cannot be a ground to claim erroneous promotion by perpetrating infringement of statutory Service Rules. In a court of law, employee cannot be permitted to contend that the Service Rules made effective on 1st October, 1975 should not be adhered to because in some case erroneous promotions had been given. The statutory Service Rules must be applied strictly in terms of the interpretation of Rules as indicated in the decision of Three Judges Bench of this Court in Khetra Mohan case.”

23. Successful completion of probation also does not in any way reinforce the right of the applicant to hold that post when the appointment has been found to be against the rules *ab initio*. With regard to the argument of promotion of some junior persons in the examinations held after 2007, the applicant in the additional affidavit filed on 08.07.2015 has contended as follows:

“2. That it is relevant to mention here that after 2003/2007 number of further test was conducted for the post of LDC in which the number of junior persons to the applicant were promoted. It is relevant to mention here that recently vide office order dated 23.02.2013 (Annex.RE-2) the respondents promoted Group 'D' employees to the post of LDC under 10% quota in which the junior persons to the applicant namely Sh. Puran Chand, Sh. Balraj Sharma, Sh. Narender Pal Singh, Sh. Tala Ram and

number of other juniors have been promoted. It is submitted that vide order dated 09.03.2015 the respondents further promoted 83 persons to the post of LDC under LDE I which also the respondents promoted the junior persons namely Sh. Sumit Kumar S/o Sh. Bans Raj, Sh. Dhani Ram S/o Sh. Gyasi Ram, Sh. Mani Shankar S/o Sh. Rajeshwar Singh, Dharmender Singh S/o Sh. Om Prakash, Ashwani Sharma S/o Sh. Brahm Prakash, Sh. Kamlesh Kumar S/o Sh. Chandu Lal (Serial No.3 to 11) in the order dated 09.03.2015 (Annex.RE-1) who are junior to the applicant and number of other juniors have been promoted and therefore, at this stage deciding to reverting the applicant by the impugned order is totally illegal and discriminatory in the eyes of law.”

24. Learned counsel for the respondents has, however, countered the submission stating that the RRs have been modified to make the promotion through Limited Departmental Competitive Examination on the basis of the merit. The respondents have filed additional affidavit on 20.08.2015 enclosing the revised RRs for the post of LDC. There are two RRs, one dated 18.10.2012 and the second dated 20.12.2013. With regard to the method of recruitment, the provisions are reproduced below:

“Notification dated 18.10.2012 –

11.	Method of recruitment whether by direct recruitment or by promotion or by deputation/absorption and percentage of vacancies to be filled by various methods.	(i)75% by direct recruitment (50% LDC-cum-English Typists & 25% LDC-cum-Hindi Typist.) (ii) 15% of the vacancies shall be filled from amongst the Group D (to be upgraded to Group ‘C’ as per 6 th Central Pay Commission report) staff who possess 12 th class pass or equivalent qualification from recognized Board or University and have rendered two years regular service in Group-D post (to be upgraded to Group ‘C’ as per 6 th Central Pay Commission report), on the basis of departmental
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		qualifying examination. (iii) 10% of the vacancies by seniority-cum-fitness who possess 12 th Class pass or equivalent qualification from recognized Board or University and have rendered two years regular service in Group-D post (to be upgraded to Group 'C' as per 6 th Central Pay Commission report).
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Notification dated 20.12.2013-

11.	Method of recruitment whether by direct recruitment or by promotion or by deputation/absorption and percentage of vacancies to be filled by various methods.	(i) 75% by direct recruitment (50% LDC-cum-English Typist & 25% LDC-cum-Hindi Typist.) (ii) 15% of the vacancies shall be filled from amongst the Group 'D' Regular staff (to be upgraded to Group 'C' as per 6 th Central Pay Commission report) who possess 12 th class pass or equivalent qualification from recognized Board or University and have rendered two years regular service in Group 'D' post (to be upgraded to Group 'C' as per 6 th Central Pay Commission report), on the basis of departmental competitive examination. The panel shall be prepared on the basis of merit maintaining the inter-seniority among the qualified candidates. (iii) 10% of the vacancies by seniority-cum-fitness who possess 12 th Class pass or equivalent qualification from recognized Board or University and have rendered of two years regular service in regular Group 'D' post (to be upgraded to Group 'C' as per 6 th Central Pay Commission report). All Group 'D' employees (to be upgraded to Group 'C' as per 6 th Central Pay Commission report) having defined hierarchy in
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		their own cadre like Malis, Security Guard etc., shall not be entitled to promotion as LDC.
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25. An order dated 09.03.2015 has been filed by the applicants in OA 1751/2014 and two other clubbed matters whereby the respondents have promoted 83 Group-D employees under 15% quota through Limited Departmental Examination to the post of LDC held on 28.02.2015. There are six candidates in this list who have been claimed by the applicants to be their juniors. However, the respondents have clarified that after introduction of merit based departmental competitive examination the applicants cannot claim promotion on the basis of seniority. In the office order dated 23.02.2013 filed by the same applicants, 83 candidates have been promoted apparently against 10% promotion quota as the order does not refer to any departmental examination. In this list, according to the applicants, S/Sh. Puran Chand, Balraj Sharma, Narendra Pal Singh, Pradeep Kumar and Tala Ram are their juniors. The respondents were asked to supply a copy of the seniority list of Group-D employees of 2002 which has been now placed on record. According to that seniority list the aforesaid promoted persons Sh. Balraj Sharma (Sty 1917), Sh. Puran Chand (Sty 1940), Sh. Narender Pal Singh (Sty 1945) and Sh. Tala Ram (Sty 1951) are junior to the applicants S/Sh. Manoj Kumar (Sty 1918), Raj Kumar (Sty 1867), Ajeet Singh (Sty 1882) and G.V.Subramaniam (Sty 1885). This

contradicts the claim of the respondents that the last promotion against 10% quota has been only up to Sty. No.1701. The respondents have not been able to substantiate their submission in this regard. The relevant portion of the reply filed by the respondents on 20.08.2015 to the additional affidavit filed by the applicants in OA 1751/2014 and other two clubbed cases is reproduced below:

“In so far as 10% quota for group D employees of DDA on the basis of seniority-cum-fitness is concerned, it is submitted that as on date candidates up to seniority number 1701 in general category have been promoted and the petitioner is having seniority number 1882.”

26. We have carefully perused the judgments cited by the parties. In OA No.88/2007 **HC Durgesh Kumar** (supra), cited by the applicants, the applicant therein was appointed as Constable in Delhi Police on 03.10.1980 and promoted to the post of Head Constable on 10.06.1990. Having undergone training required for promotion to the post of ASI he was due for promotion to that post but pursuant to show cause notice dated 22.02.2006 he was reverted to the post of Constable vide order dated 16.06.2006. The Tribunal considered the question whether the reversion of the applicant to the post of Constable after serving for 16 years as Head Constable was justified. The Tribunal took a view that appointment of a Government servant can be cancelled as soon as it came to the notice of the appointing authority that promotion or appointment was a result of factual error but on cancellation, the employee has to be brought to the post which he would have held but for incorrect order of appointment. Taking

into account the fact that the applicant for the reason of his promotion in 1990 could not take examinations held in 1998, 1999 and 2001, the Tribunal directed the respondents to treat the applicant as having passed the examination to the post of Head Constable held immediately after the examination in which the applicant had appeared and passed the test, and he be treated as the last candidate having passed the said examination in the said year, and his seniority be accordingly fixed. The relevant portion of that order reads as below:

“12. No doubt, appointment of a Government servant can be cancelled as soon as it may be brought to the notice of the appointing authority that the promotion or appointment was result of factual error, but on cancellation, the employee has to be brought to the position which he would have held but for incorrect order of promotion or appointment. Whereas, therefore, it may be true that the wrong order of appointment/promotion would be cancelled, but surely, the applicant cannot be brought to the original position as surely, he cannot possibly take examinations that were held in 1998, 1999 and 2001. We have already mentioned above that the facts of this case are rather peculiar. Whereas, the mistake in showing the caste of the applicant as ST and later as SC was exclusively of the respondents, in which the applicant had no hand whatsoever, the applicant, however, knew about this mistake, but would not report it to the concerned authorities, as he ought to have, belonging to a disciplined force. Having said so, the situation that prevails now where the applicant cannot possibly be restored to his original position, has also to be taken into consideration.

13. We were pondering over many permutations and combinations to find out a solution to the vexed problem represented in the present case, but before we could ourselves arrive at some equitable solution, the counsel representing the applicant has pointed out that exactly in similar situation the respondents themselves had thought a solution which is just and equitable. The counsel referred to the case of one HC Asha Ram who had appeared in 'A' list test held in the year 1978 and his name was brought on promotion list 'A' w.e.f. 24.1.1979 against the quota of ST category. His name was brought on list 'B' w.e.f. 17.5.1980 after passing the lower school course in the term ending September, 1979. He was promoted as officiating Head Constable w.e.f. 7.7.1980. Subsequently, it came to notice that he actually belonged to general community and not to ST. The fact of his being an ST candidate was mentioned in the order of 'A' list against

his name, but he did not point out that he actually belonged to general community. Had this fact come to the notice of the authorities at initial stage, his name would not have been included in promotion lists 'A' and 'B' and then promoted to the rank of Head Constable, as he had failed to make the grade on the basis of percentage of marks, fixed for SC candidates. In the circumstances, as mentioned, Asha Ram was given a show cause notice for cancellation of the erroneous order bringing his name on promotion lists 'A' and 'B' and promotion to the rank of Head constable. Asha Ram responded to the show cause notice and the concerned authority vide order dated 24.3.1986 (Annexure A-12) while taking into consideration FR 31-A as well, recommended the following actions:

"i) The orders No.1452-1500/SIP, dated 25.1.79, 8715-35/SIP, dated 17.5.80 and No.12331-42/SIP dated 7.7.80, about bringing the name of HC Asha Ram, No.3074/DAP to promotion list 'A' and 'B' and promotion as Head constable (Ex.), respectively, are hereby cancelled.

ii) The name of HC Asha Ram, No.3074/DAP is brought on promotion list 'A' w.e.f. 29.9.79, on list 'B' w.e.f. 27.11.80 and promoted as Offg. H.C. w.e.f. 1.9.81, the date when the last constable of the batch (whose name was admitted in promotion list 'A' w.e.f. 29.9.81) was promoted.

iii) For the purpose of seniority as Head Constable, HC Asha Ram, No.3074/DAP, is kept between HC Ved Prakash No.390/W, and HC Paras Ram, No.97/DAP, who were promoted on 1.9.81.

iv) The excess pay and allowances, drawn by HC Asha Ram, No.3074/DAP, from 7.7.80 to 31.8.81, may be recovered from him, in instalments.

v) The name of HC Asha Ram No.3074/DAP, may be removed from S.T. category, as mentioned in his service record."

From the action taken at serial No. ii), it would appear that the name of HC Asha Ram was brought on list 'A' w.e.f. 29.9.1979, on list 'B' w.e.f. 27.11.1980 and promoted as officiating Head Constable w.e.f. 29.9.1981, the date when the last Constable whose name was admitted in promotion list 'A' w.e.f. 29.9.81 was promoted. From paragraph 5 of Annexure A-12, it would further appear that four tests subsequent to the test when Asha Ram had appeared, were held in between 1979 and 1983. The next immediate test from the test in which he had appeared was in 1979, i.e., 29.9.1979.

14. Having given our thoughtful consideration to the issue, we find the solution to the problem would lie in giving same treatment to the applicant as was thought proper even by the department in an absolutely identical case. That being so, while setting aside the impugned orders, we would order that the applicant be treated to have passed the examination required for promotion to the post Head Constable held immediately after the examination in which the applicant had appeared and passed the test, and he be treated as the last candidate having passed the said examination in the

said year, and his seniority be accordingly fixed. The applicant shall also be entitled to consequential reliefs that may accrue to him on account of fixation of his seniority in the manner referred to above. In view of the peculiar facts of this case, costs are made easy.”

27. The applicants in OA No.1751/2014, 20/2014 and 1753/2014, relying on **K. Ajit Babu** (supra), have sought alternative relief that the OAs may be referred to the Full Bench for reviewing the order dated 17.11.2011 in OA No.139/2010 and allow the applicants to be impleaded in that OA as respondents. We have considered this prayer of the applicants. The order dated 17.11.2011 categorically states that this Tribunal refrained from quashing the appointment of Sh. Manoj Kumar as he was not impleaded as party in OA No.139/2010. The Tribunal directed the respondents to correct their admitted mistake by following due process of law. The respondents have now proceeded by giving them SCNs and opportunity to present their case. Four out of five such persons are before this Tribunal in the OAs mentioned in this order. Therefore, it cannot be concluded that by not impleading Sh. Manoj Kumar Jha or any other candidate in OA No.139/2010 who are proposed to be reverted now, their rights have been prejudiced or denied natural justice. The alternative prayer of the applicants therefore cannot be accepted.

28. On the issue that the respondent-department cannot cancel the appointment after so many years on the ground of some discrepancy at the time of preparation of final select list, the applicant has tried to draw support from **K.Chandrasekhar Rao** (supra). The Hon’ble

Supreme Court had taken a view that considering that the intention behind compassionate appointments under the scheme was to provide relief to the family members of deceased persons, and thus on the yardstick of social justice, such relief cannot be withdrawn on the ground of some alleged discrepancy which has not been supported by any data, is unreasonable and therefore, even unsustainable.

29. In **Vikas Pratap Singh** (supra) there was an error committed by the respondent-Board in the matter of evaluation of answer scripts which could not have been attributed to the appellants in that case who had neither been found to have committed any fraud or misrepresentation in being appointed in the first merit list. Later, that merit list was revised on the basis of revaluation of the answer scripts in which the appellants' names did not figure and their appointments were cancelled. The Hon'ble Supreme Court directed the respondent – State to appoint the appellants who had already undergone training and efficiently served the Government for more than 3 years, in the revised merit list placing them at the bottom of the said list. It was further directed that such appointment will be treated as a fresh appointment and would not entitle the appellants to any backwages or seniority or any benefit based on their earlier appointment.

30. In **P.S.Sadasivaswamy** (supra) the Hon'ble Supreme Court took a view that *“a person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of*

limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle matters.”

31. The applicant in OA No.4550/2013 has argued that the applicants in OA No.139/2010 had questioned his promotion in the year 2007 after a lapse of nearly three years, and therefore, the claim should be treated as stale as observed by Hon’ble Supreme Court in the above mentioned case.

32. The applicants have also relied on **Barkhoo Ram** (supra) to buttress the proposition that he cannot be reverted at this belated stage. The Hon’ble High Court was considering the jurisdiction of the review DPC when it observed that “*a person when promoted after following the procedure laid down and works for a long time on that post, acquires a right to hold the said post, unless and until there exists very strong and cogent reasons, he should not be reverted there from for no fault on his part.*” However, the High Court further noted that “*the right of a person could not have been taken away without following the prescribed procedure. In any event before taking into consideration the*

fact that as ever before passing the impugned order the principles of natural justice were not complied with, the same cannot be sustained.”

It is obvious that the case of the applicant is not that the due procedure is not being followed by the respondents in this case before considering their reversion to the lower post.

33. In **Narendra Singh** (supra) the Hon'ble Supreme Court observed as follows:

“28. It is true that the mistake was of the Department and the respondent was promoted though he was not eligible and qualified. But, we cannot countenance the submission of the respondent that the mistake cannot be corrected. Mistakes are mistakes and they can always be corrected by following due process of law. In *Indian Council of Agricultural Research & Anr. v. T.K. Suryanarayan & Ors.*, (1997) 6 SCC 766, it was held that if erroneous promotion is given by wrongly interpreting the rules, the employer cannot be prevented from applying the rules rightly and in correcting the mistake. It may cause hardship to the employees but a court of law cannot ignore Statutory Rules.”

34. A perusal of the judgments cited above would show that in the circumstances similar to those in the present case the courts have been striving to achieve the golden mean between the strict enforcement of service rules that would restore the rights of the wrongfully deprived candidates and affording justice on the yardstick of equity and social justice to the incumbents erroneously appointed without any fault attributable to them and having served for long years. We propose to adopt the same approach in respect of the applicants in the present OAs.

35. Taking into account the entire conspectus of the case and the judgments cited by both sides, we come to the conclusion that admittedly there was error committed in the appointment order issued on 16.08.2007 when some junior persons got appointment by denying the rights of some senior qualified persons and the same has to be corrected as was the view taken by this Tribunal in OA No.139/2010 irrespective of the delay. Even though the present applicants were not impleaded in OA No.139/2010, the respondents have now given them opportunity by way of SCNs. The applicants, therefore, cannot have any grievance of denial of opportunity to present their side of the case or violation of the principles of natural justice. The law does not sanction continuation of illegality that crept in the promotion order of 2007 by non-adherence to the provisions of the recruitment rules. Therefore, the respondents are directed to go ahead with the correction in the order dated 16.08.2007 for appointments against 38 general vacancies within a period of two months from the date of receipt of a copy of this order.

36. With regard to the reversion of the applicants, we find force in the argument that they were in no way responsible for the negligence of the respondents that led to their appointment in the first place, and that the judgments cited above lend support to mitigation of the harsh consequences of strict enforcement of service rules in the backdrop of equity in their favour. The applicants successfully completed the probation and have continued performing their duties on the post of

LDC for the last nearly 8 years to the satisfaction of the respondents. The applicants have, however, not been able to show that there was any limited departmental examination held, after 2003, prior to amendment of the RRs in 2013, in which they could have participated had they not been promoted in 2007. On the other hand their claim that some of their juniors have been promoted vide order dated 23.02.2013 against the promotion quota could not be repudiated by the respondents. In such a situation we direct the respondents to treat the applicants as ad hoc LDCs with effect from 16.08.2007 till such time they are promoted against 10% or 15% quota in accordance with the RRs. The respondents may also keep in view the endorsement in the order dated 09.08.2007 implying that the applicant in OA No.1751/2014 would fall in the reserved category and his position in the appointments in that category will have to be examined. It is further made clear that the services rendered by the applicants as LDC from 16.08.2007 till the date of their regularisation in accordance with the RRs in the post of LDC shall not count towards seniority or eligibility for promotion to higher post. Their contention that some of their juniors have been promoted against 10% quota on 23.02.2013 shall be examined and an order passé within two months from the date of receipt of a copy of this order. With these directions, the OAs are disposed of. No costs.

(V.N. Gaur)
Member (A)
'sd'

(B.P. Katakey)
Member (J)