

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.1848/2016
with
M.A.No.1935/2016

Order Reserved on: 18.08.2017
Order pronounced on 04.10.2017

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)

Gurmit Singh
Aged 57 years
S/o Shri Santa Singh
Working as Joint Registrar
Central Administrative Tribunal
Principal Bench, New Delhi
R/o XY-13, Sarojni Nagar
New Delhi – 110 023. ... Applicant

(By Advocate: Shri Harpreet Singh)

Versus

1. The Secretary
Ministry of Personnel
Public Grievances and Pensions
Deptt. of Personnel and Training
North Block, New Delhi – 110 001.
2. Principal Registrar
Central Administrative Tribunal
Principal Bench
New Delhi.
3. Sh. Gautam Mondal
Registrar

Central Administrative Tribunal
Patna Bench
88/A Shri Krishna Nagar
Patna Bihar – 800001.

4. Shri R.K.Mishra
Joint Registrar
Central Administrative Jabalpur Bench
15, Civil Lines, Caravas Building
Jabalpur – 482001
Madhwa Pradesh.
5. Smt. Raj Laxmi Ravi (since retired)
R/o Flat No.2D, Dev Apartments
No.17, Sunderrajan Street
Abhiramapuram
Chennai – 600 018.
6. Smt. S.Uma (since retired)
(Though Respondent No.2)
[Current address unavailable with Applicant]
7. Shri V. Soman (since retired)
Sri Sailom, Marathurvattom
Cherthla – 688539
Kerala.

... Respondents

(By Advocate: Sh. Gyanendra Singh, for official respondents and Shri Abhishek Vikas for Respondents No.3)

ORDER

By V. Ajay Kumar, Member (J):

The applicant, a Joint Registrar in the 2nd Respondent, Central Administrative Tribunal, filed the OA seeking correction of his seniority position vis-à-vis Respondent No.3 in the category of Deputy Registrar and Joint Registrar with all consequential promotions and benefits.

2. The facts as narrated by the applicant are that the applicant, who belongs to Unreserved Category, joined the Central Secretariat Service as Assistant in the Ministry of Power, New Delhi on 12.01.1984. He joined in the 2nd Respondent, Central Administrative Tribunal, on 28.03.1988, as Assistant, on deputation basis. He was absorbed in the 2nd Respondent-Central Administrative Tribunal on 01.11.1989. Thereafter, he was promoted as Section Officer on 12.01.1992. He was then promoted as Deputy Registrar, on ad hoc basis, on 05.07.2002. He was promoted as Deputy Registrar, on regular basis, w.e.f. 20.10.2003, vide Annexure A6-Order dated 26.08.2008, and thereafter, the applicant was promoted as Joint Registrar, on regular basis, vide Annexure A8-Order dated 28.12.2011. Since then, the applicant has been working as Joint Registrar of the 2nd Respondent-Central Administrative Tribunal.

3. The applicant also stated that the 3rd Respondent, who belongs to SC category, was absorbed in the 2nd Respondent- Central Administrative Tribunal, as Section Officer, on 19.06.1997. He was promoted as Deputy Registrar, on regular basis, on 10.09.2003. He was promoted as Joint Registrar on 28.12.2011, vide Annexure A8-Order dated 28.12.2011 under which the applicant was also promoted as Joint Registrar. Thereafter, the 3rd Respondent was promoted as Registrar, vide Annexure A10-Order dated 02.08.2013. Since then he has been working as Registrar of the 2nd Respondent- Central Administrative Tribunal.

4. The applicant further submits that vide Annexure A3-Final Seniority List dated 12.02.2001 of Section Officer/Court Officer/Private Secretary as on 01.05.2000 of the 2nd Respondent- Central Administrative Tribunal, the name of the applicant was shown at Sl.No.30, whereas the name of the 3rd Respondent was shown at Sl.No.59. However, though the 3rd Respondent was junior to the applicant in the category of Section Officers but as he belongs to SC category, he was promoted as Deputy Registrar against the reserved vacancy, as per the roster, on regular basis, w.e.f. 01.07.2002, vide Annexure A5 dated 10.09.2003, whereas the applicant, who belongs to unreserved category, was promoted as Deputy Registrar, on regular basis, w.e.f. 20.10.2003, vide Annexure A6 Order dated 26.08.2008, as no DPC was held from 2002 to August, 2008.

5. It is also submitted by the applicant that during the year 2011, the sanctioned strength of Group 'A' posts was revised by the concerned Ministry, and accordingly the posts of Registrars were reduced from 14 to 9 and posts of Joint Registrars were increased from 3 to 11 (Annexure A7 Order dated 27.07.2011). In view of the increase in the number of next promotional posts of Joint Registrars, both the applicant and the 3rd Respondent were promoted as Joint Registrars, on regular basis, vide the same Annexure A8-Order dated 28.12.2011. The 2nd Respondent-Central Administrative Tribunal issued the Central Administrative Tribunal (Group A posts) Recruitment (Amendment) Rules, 2012 (Annexure A9) and thereafter, the 3rd Respondent was promoted as Registrar, against a post arising

under the erst while/old recruitment rules, on regular basis, vide Annexure A10-Order dated 02.08.2013. Thereafter, a DPC was held on 15.04.2015 and that the applicant's name was also recommended for promotion to the post of Registrar vide Annexure A13 dated 17.04.2015 but till date, the applicant was not issued with any promotion order to the post of Registrar.

6. The applicant also submits that, at this stage, the 1st Respondent-Union of India, vide Annexure A14 - Letter dated 06.07.2015 informed that the Order, dated 25.07.2008, issued in respect of promotions of 21 officers (including the applicant) of Central Administrative Tribunal as Deputy Registrars, on regular basis, was erroneous as the said officers were promoted with retrospective effect and not prospectively as had been prescribed in Para 6.4.4 of DPC Guidelines issued vide DoPT's OM dated 10.04.1989, and accordingly, the Central Administrative Tribunal was advised to cancel the Order dated 25.07.2008 by revising the date of promotion of the applicant and others as Deputy Registrars by promoting them w.e.f. the date of actual promotion or from the date of DPC, whichever is later, and also to revise the further promotions consequently. When the contrary view, i.e., supporting the retrospective date of promotion of the applicant and others as Deputy Registrars, of the 2nd Respondent-Central Administrative Tribunal had not accepted by the 1st Respondent, the applicant filed OA No.1849/2016 challenging the Order dated 28.10.2015 vide which the proposal of the 2nd Respondent-CAT was rejected and order dated 06.07.2015 was

affirmed, resulting the change of date of regular appointment of the applicant as Deputy Registrar from 20.10.2003 to 28.02.2008, and this Tribunal allowed the said OA on 28.04.2017, quashing the impugned orders dated 28.10.2015 and 06.07.2015 and also the consequential order dated 13.02.2017. As a result, the applicant's promotion as Deputy Registrar, on regular basis, w.e.f. 20.10.2003 was upheld.

7. The applicant submits that while he was working as Assistant, on regular basis, in the 2nd Respondent-Central Administrative Tribunal, he was promoted as Section Officer, on regular basis, on 12.01.1992 and whereas the 3rd Respondent was absorbed as Section Officer on permanent basis, in the 2nd Respondent Central Administrative Tribunal on 19.06.1997, and as a result he was much junior to the applicant. Though, the 3rd Respondent, who belongs to SC category, was promoted as Deputy Registrar, on 10.09.2003, that is prior to 20.10.2003, i.e., the date w.e.f. which the applicant was promoted as Deputy Registrar, but by virtue of '*catch up rule*', the applicant's seniority should be restored, once he was promoted to the same category, and as a result, the applicant should be given seniority above the 3rd Respondent, in the category of Deputy Registrar and also in further promotional categories. But the 2nd respondent-Central Administrative Tribunal, vide the impugned Annexure A2 – Final Seniority List of Joint registrars dated 12/15.04.2013 and also vide the impugned Annexure A1 – Revised Final Seniority List of Deputy

Registrars, dated 25.07.2013 shown the applicant as junior to the 3rd Respondent illegally and against to the settled position of law.

8. The applicant filed the OA, along with MA No.1935/2016 seeking condonation of delay of 658 days in filing the OA. In support of the said MA, it is stated that the respondents issued the impugned revised seniority list of Deputy Registrars on 25.07.2013, and the applicant came to know about the same on 02.08.2013, i.e., when the 3rd Respondent was promoted as Registrar ignoring the claim of the applicant. It is also submitted that after the Hon'ble Apex Court pronounced the Judgement in **S. Panneer Selvam & Others v. State of Tamilnadu and Others**, (2015) 10 SCC 292, wherein it was held that "in the absence of any provision for consequential seniority in the rules, the '*catch up rule*' will be applicable and the roster point reserved category promotees cannot count their seniority in the promoted category from the date of their promotion and the senior general candidates if later reach the promotional level, general candidates will regain their seniority", the rights of the applicant for seniority were crystallized. Reliance was also placed on **B.K.Pavitra and Others v. Union of India & Others**, (2017) 4 SCC 620, **Tuka Ram Kana Joshi & Others v. Maharashtra Industrial Development Corporation and Others**, (2013) 1 SCC 353, and **Shiba Shankar Mohapatra and Others v. State of Orissa & Others**, (2010) 12 SCC 471, Writ Appeal No.2328 of 2007 in **Maria Padma W. Miranda v. State of Kerala & Others**, of the Hon'ble

High Court of Kerala, dated 26.02.2009 and O.A.No.4281/2014 dated 03.06.2016 in OA No.4281/2014 (**All India Federation of Customs, Central Excise & Service Tax SC/ST Employees Welfare Organization (Regd.) & Others v. Union of India & Others**) & batch; **Indra Sawhney & Ors v. Union of India & Others**, (1992) Supp. 3 SCC 217; **R.K.Sabharwal v. State of Punjab**, (1995) 2 SCC 745; **M.Nagraj & Others v. Union of India & Ors.** (2006) 8 SCC 212; **Suraj Bhan Meena & Anr. v. State of Rajasthan & Ors.**, (2011) 1 SCC 467; **U.P.Power Corporation Ltd. v. Rajesh Kumar & Ors.**, (2012) 7 SCC 1, **Suresh Chand Gautam v. State of Uttar Pradesh & Ors.**, AIR 2016 SC 1321; **Central Bank of India v. Employees Welfare Association**, (2015) 12 SCC 308; **Ajit Singh Januja (Ajit Singh-I) v. State of Punjab**; 1996 SCC (L&S) 540 and **Union of India v. Virpal Singh Chauhan**, (1995) 6 SCC 684.

9. It is also submitted that the delay is neither wilful nor wanton but only due to the fact that the applicant was required to ascertain the factual position by inspecting the relevant records.

10. The 2nd Respondent - Central Administrative Tribunal and the private respondents No.3, 4 and 5 filed separate counters. The private respondents 6 and 7 neither filed any counter nor represented by any counsel.

11. The private respondents No.4 and 5 vide their respective counters submitted that they are seniors both to the applicant and respondent No.3 in the category of Section Officer and, hence, in the

event of the OA is accepted, they should be placed above the applicant and be given all the consequential benefits.

12. The respondent Nos.1, 2 and 3 vide their respective counters opposed the OA and the MA on various grounds.

13. The above referred facts are, largely, not disputed, but the learned counsel for the respondents strongly contended that the OA is liable to be dismissed on the ground of delay and laches. They have submitted that the applicant has not able to show any valid reason for condonation of delay.

14. The learned counsel for the respondents further contended that the law declared by the Hon'ble Apex Court in **S. Panneer Selvam** (supra) and **B. K. Pavitra** (supra) is prospective and hence the same cannot have any application to the facts of the present case and to the seniority which was finalized prior to the date of the said judgements.

15. The learned counsel for the 3rd Respondent also submitted that the promotion orders of the 3rd Respondent to the posts of Deputy Registrar, Joint Registrar and to the post of Registrar were not challenged till date, and in the absence of the same, the challenge to the consequential seniority position is unsustainable. The settled seniority cannot be disturbed after a long lapse of time. Reliance was placed on **H.S.Vankani and Others v. State of Gujrat and others**, (2010) 4 SCC 301, **S. Sumnyan and Others v. Limi Niri and**

Others, (2010) 6 SCC 791, and **Shiba Shankar Mohapatra and Others v. State of Orissa & Others**, (2010) 12 SCC 471.

16. Heard Shri Harpreet Singh, the learned counsel for the applicant and Shri Gyanendra Singh, the learned counsel for the official respondents and Shri Abhishek Vikas, the learned counsel for the private Respondent No.3 and perused the pleadings on record.

17. Admittedly, the applicant is senior to the 3rd Respondent in the category of Section Officer and that the 3rd Respondent though junior to the applicant in the category of Section Officer but was promoted as Deputy Registrar earlier to the applicant against a roster point reserved for SC category. The 3rd Respondent also got the consequential further promotions as Joint Registrar and Registrar and accordingly placed above the applicant in the seniority position of the seniority lists of Deputy Registrar and Joint Registrar.

18. As per the directions of this Tribunal the learned counsel for the 2nd Respondent-CAT, filed copies of all the seniority lists in the category of Deputy Registrars, and the same are: the Draft Seniority List in the grade of Deputy Registrar dated 02.11.2010 and a final seniority list of the Deputy Registrar dated 12.01.2011 and another Final Seniority List of the Deputy Registrar dated 28.01.2011 and a revised Final Seniority list of the Deputy Registrars dated 25.07.2013 and another revised final seniority list of the Deputy Registrar dated 29.01.2014 and another revised Draft Seniority list of the Deputy Registrar dated 17.02.2017, which was withdrawn vide Office Order

dated 31.07.2017, in view of the above referred judgment dated 28.04.2017 passed in O.A.No.1849/2016. As a result, the Revised Final Seniority List of Deputy Registrars of CAT dated 29.01.2014 became final and subsisting as on today. The 3rd respondent was shown as senior to the applicant in all these seniority lists. All the aforesaid seniority lists are pertaining to the grade of Deputy Registrar in CAT, who were appointed/promoted, as on 01.01.2010.

19. In view of the above referred rival contentions, the issues to be decided in this OA are as under:

- i) Whether the delay of 658 days in filing the OA can be condoned?
- ii) Whether the applicant is entitled to be placed above the 3rd Respondent in the seniority position of the post of Deputy Registrar, once he was promoted, though, later to the 3rd Respondent to the said category, by applying the '*catch-up rule*'?
- iii) Whether the legal principles decided in **Panneer Selvam** (supra) and **B.K.Pavitra** (supra), are prospective in nature and not applicable to the facts of the case?

20. The Hon'ble Apex Court in **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and Others**, (2013) 12 SCC 649, after discussing the entire case law on the issue of condoning of delay in filing the petitions, observed as under:

"15. From the aforesaid authorities the principles that can broadly be culled out are:

(i). There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii). The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

(iii). Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv). No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v). Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi). It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii). The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(vii). There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix). The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x). If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi). It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii). The entire gamut of facts are to be carefully scrutinized and the approach should be based on the

paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii). The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

21. As rightly submitted by the learned counsel for the respondents that the applicant was shown as junior to the 3rd Respondent in the category of Deputy Registrar for the first time in the Draft Seniority List dated 02.11.2010 and the same position continued in all the subsequent seniority lists of Deputy Registrars till date. Hence, the contention of the applicant that he came to know about the act of showing the name of 3rd Respondent as senior to him only when Annexure A1-Revised Final Seniority List of Deputy Registrars dated 25.07.2013 was issued cannot be accepted. The other contention of the applicant that even from 25.07.2013 also, the delay occurred as he was required to inspect the relevant records for ascertaining the factual position cannot be a sufficient ground for condonation of the delay. However, in view of the observations of the Hon'ble Apex Court in **Esha Bhattacharjee** (supra) with regard to the perpetuation of injustice, and action in violation of the settled position of law, it is necessary to examine the other legal issues of the case, before deciding the issue of delay.

22. In **M. Nagaraj and Others v. Union of India & Others**, (2006) 8 SCC 212, the Hon'ble Apex Court, while upholding the constitutional validity of the 77th, 81st, 82nd and 85th Amendments to the Constitution, held that "the State is not bound to make reservation for SCs/STs in matters of promotions. However, if they

wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance with Article 335. It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling limit of 50% or obliterate the creamy layer or extend the reservation indefinitely.”

23. In **S. Panneer Selvam** (supra), the Hon’ble Apex Court, while dealing with the ‘*catch-up rule*’, after observing:

“12. In *Union of India And Ors. vs. Virpal Singh Chauhan And Ors.*, (1995) 6 SCC 684, a question had arisen as to whether a person in SC or ST category who gets accelerated promotion because of reservation would also get consequential seniority in the higher post if he gets that promotion earlier than his senior in general category and this Court held that such an employee belonging to SC/ST category on promotion would not get consequential seniority and his seniority will be governed by the panel position. It was held as under:-

“24. ...In short, it is open to the State, if it is so advised, to say that while the rule of reservation shall be applied and the roster followed in the matter of promotions to or within a particular service, class or category, the candidate promoted earlier by virtue of rule of reservation/roster shall not be entitled to seniority over his senior in the feeder category and that as and when a general candidate who was senior to him in the feeder category is promoted, such general candidate will regain his seniority over the reserved candidate notwithstanding that he is promoted subsequent to the reserved candidate. There is no unconstitutionality involved in this. It is permissible for the State to so provide...”

XXXXXX XXXXXXXX

16. In *Ajit Singh And Ors.(II) vs. State of Punjab And Ors.*, (1999) 7 SCC 209, the Constitution Bench was concerned with the issue whether the decisions in *Virpal Singh Chauhan* and *Ajit Singh Januja* case which were earlier decided to the effect upholding the ‘*catch-up rule*’, that is, the seniority of general category candidates is to be confirmed or whether the later deviation made in *Jagdish Lal* case against the general category candidates. In *Ajit Singh (II)* case, inter-alia, the following points arose for consideration:-

(i). Can the roster-point promotees count their seniority in the promoted category from the date of their continuous officiation

vis-à-vis general candidates, who were senior to them in the lower category and who were later promoted to the same level?

(ii) Have Virpal [(1995) 6 SCC 684] and Ajit Singh [(1996) 2 SCC 715] been correctly decided and has Jagdish Lal [(1997) 6 SCC 538] been correctly decided?

(iii) Whether the “catch-up” principles are tenable?

17. The Constitution Bench held that Articles 16(4) and (4A) did not confer any fundamental right to reservation and that they are only enabling provisions. Overruling the judgment in Jagdish Lal case and observing that rights of the reserved classes must be balanced against the interests of other segments of society in para (77), this Court held as under:-

“77. We, therefore, hold that the roster-point promotees (reserved category) cannot count their seniority in the promoted category from the date of their continuous officiation in the promoted post, — vis-à-vis the general candidates who were senior to them in the lower category and who were later promoted. On the other hand, the senior general candidate at the lower level, if he reaches the promotional level later but before the further promotion of the reserved candidate — he will have to be treated as senior, at the promotional level, to the reserved candidate even if the reserved candidate was earlier promoted to that level. We shall explain this further under Point 3. We also hold that Virpal, (1995) 6 SCC 684 and Ajit Singh, (1996) 2 SCC 715 have been correctly decided and that Jagdish Lal, (1997) 6 SCC 538 is not correctly decided. Points 1 and 2 are decided accordingly.”

held as under:

“35. In the absence of any provision for consequential seniority in the rules, the ‘catch up rule’ will be applicable and the roster-point reserved category promotees cannot count their seniority in the promoted category from the date of their promotion and the senior general candidates if later reach the promotional level, general candidates will regain their seniority. The Division Bench appears to have proceeded on an erroneous footing that Article 16 (4A) of the Constitution of India automatically gives the consequential seniority in addition to accelerated promotion to the roster-point promotees and the judgment of the Division Bench cannot be sustained.

36. In the result, the impugned judgment is set aside and these appeals are allowed. State Government-respondent Nos. 1 and 2 are directed to revise the seniority list of Assistant Divisional Engineers applying the ‘catch up rule’ within four months. Pursuant to the impugned judgment of the Division Bench of Madras High Court, if any further promotion had been granted to the Assistant Divisional Engineers promoted from the rank of Junior Engineers following rule of reservation with consequential seniority, the same shall be reversed. Further promotion of Assistant Divisional Engineers shall be as per the revised seniority list. The parties shall bear their own costs.”

24. In **B. K. Pavitra** (supra), after considering the entire case law on '*catch-up rule*', including **S. Panneer Selvam** (supra), the Hon'ble Apex Court held as under:

“28. It is clear from the above discussion that exercise for determining 'inadequacy of representation', 'backwardness' and 'overall efficiency', is a must for exercise of power under Article 16(4A). Mere fact that there is no proportionate representation in promotional posts for the population of SCs and STs is not by itself enough to grant consequential seniority to promotees who are otherwise junior and thereby denying seniority to those who are given promotion later on account of reservation policy. It is for the State to place material on record that there was compelling necessity for exercise of such power and decision of the State was based on material including the study that overall efficiency is not compromised. In the present case, no such exercise has been undertaken. The High Court erroneously observed that it was for the petitioners to plead and prove that the overall efficiency was adversely affected by giving consequential seniority to junior persons who got promotion on account of reservation. Plea that persons promoted at the same time were allowed to retain their seniority in the lower cadre is untenable and ignores the fact that a senior person may be promoted later and not at same time on account of roster point reservation. Depriving him of his seniority affects his further chances of promotion. Further plea that seniority was not a fundamental right is equally without any merit in the present context. In absence of exercise under Article 16(4A), it is the '*catch up*' rule which is fully applies. It is not necessary to go into the question whether the concerned Corporation had adopted the rule of consequential seniority.

29. In view of the above, we allow these appeals, set aside the impugned judgment and declare the provisions of the impugned Act to the extent of doing away with the '*catch up*' rule and providing for consequential seniority under Sections 3 and 4 to persons belonging to SCs and STs on promotion against roster points to be ultra vires Articles 14 and 16 of the Constitution. The judgment will not affect those who have already retired and will not affect financial benefits already taken. Consequential promotions granted to serving employees, based on consequential seniority benefit, will be treated as ad hoc and liable to be reviewed. Seniority list may be now revised in the light of this judgment within three months from today. Further consequential action may be taken accordingly within next three months. “

25. A careful observation of the above case law, clearly indicates that the principle of '*catch-up rule*' was evolved with certainty way back in the year 1995 itself in **Union of India v. Virpal Singh Chauhan** (1995) 6 SCC 684. It was again affirmed in **Ajit Singh(2) v. State of Punjab**, (1999) 7 SCC 209.

26. In spite of the clear dicta on the concept of '*catch-up rule*', and '*consequential seniority*', the respondents acted against the same by showing the applicant as junior to the 3rd Respondent all through, i.e., from the Draft Seniority List of Deputy Registrars, dated 02.11.2010 to the Revised Final Seniority List of Deputy Registrars dated 29.01.2014 and perpetuated the said violation by promoting the 3rd Respondent to further promotions of Joint Registrar and Registrar earlier than the applicant.

27. The submission of the learned counsel for the respondents that the principles decided in **S.Panneer Selvam and in B.K.Pavitra** with regard to '*catch-up rule*' and '*consequential seniority*' have no application to the facts of the present case as the seniority of the applicant vis-à-vis the 3rd Respondent was settled in the year 2011 itself, when a Final Seniority List of the Deputy Registrars was issued on 12.01.2011, and the said decisions, which were pronounced in the years 2015 and 2017 respectively, have only prospective effect cannot be countenanced as the concepts of '*catch-up rule*' and '*consequential seniority*' were settled way back in the year 1995 in **Virpal Singh Chauhan** (supra) or at least in the year 1999 in **Ajit Singh (2)** (supra), when the said principle was reaffirmed.

28. The learned counsel for the respondents placed reliance on the decisions of **H.S.Vankani, S.Sumnyan and Shiba Shankar Mohapatra** (supra), in support of their contention that once the seniority had been fixed and it remains in existence for a reasonable

period, any challenge to the same should not be entertained. There is no quarrel with the said principle, but as observed by the Hon'ble Apex Court in **Esha Bhattachargee** (supra), once it is shown that there was a grave injustice, 'the Courts are obliged to remove injustice' by condoning the delay and the challenge to the seniority can be entertained to prevent the perpetuation of the violation of the settled principles of law.

29. In the circumstances, all the issues held in favour of the applicant and the delay in filing the OA is condoned and the MA No.1935/2016 is allowed.

30. Further, for the reasons mentioned above and in view of the above referred settled position of law, the OA is allowed, and the respondents are directed to re-draw the seniority list, as per the concepts of '*catch-up rule*' and '*consequential seniority*', and to assign the appropriate seniority position to the applicant above the 3rd Respondent in the category of Deputy Registrar and above, with all consequential benefits, including consideration for further promotions with effect from due dates, if he is otherwise eligible, however, without any back-wages. Further, in the peculiar circumstances of the case, this exercise shall be completed without any adverse orders of reversion or recovery to the 3rd Respondent. No costs

(Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)