

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH: HYDERABAD**

**Original Application Nos. 021/00486/2012**

**Reserved on: 10.10.2018**

**Order pronounced on: 23.10.2018**

Between:

1. Sd. Khaleem, S/o. S.Kareem,  
Aged 30 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Sanathnagar.
2. M. Varahal Raju, S/o. Krishnam Raju,  
Aged 35 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Sanathnagar.
3. P. Shashidhar, S/o. P. Ramnarsiah,  
Aged 34 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Sanathnagar.
4. G. Satya Murali, S/o. G. Lingaiah,  
Aged 33 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Sanathnagar.
5. B. Rajesh, S/o. B. Badva Rao,  
Aged 31 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Secunderabad.
6. D.R. Aswini Kumar, S/o. Nageswara Rao,  
Aged 32 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Secunderabad.
7. U. Kondala Rao, S/o. U. Satyanarayana,  
Aged 33 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Secunderabad.
8. Ch. Srinivas, S/o. Ch. Boomalingam,  
Aged 42 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Secunderabad.
9. K. Prashanth Eswar, S/o. Venkat Ratnam,

- Aged 33 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Sanathnagar.
10. P. Anjaiah, S/o. Yadagiri,  
Aged 34 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Sanathnagar.
  11. A. Balaraj, S/o. Narsimlu,  
Aged 35 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Sanathnagar.
  12. B. Pavan Prasad, S/o. B.V. Subba Rao,  
Aged 31 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Sanathnagar.
  13. Sarada Srinivas, S/o. S. Ganga Rao,  
Aged 38 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Vijayawada.
  14. A. Kishore Babu, S/o. A. Madhavaiah,  
Aged 34 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Vijayawada.
  15. K. Samba Siva Rao, S/o. Kumara Swamy,  
Aged 31 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Vijayawada.
  16. I. Nagavarma Raju, S/o. I. Siva Rama Raju,  
Aged 33 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Vijayawada.
  17. A. Subhash Chandra Bose, S/o. Ananda Rao,  
Aged 36 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Vijayawada.
  18. P.S. Prasad Babu, S/o. Ganga Rao,  
Aged 31 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Vijayawada.
  19. G. Sai Ram Prasad, S/o. G. Mohan Rao,  
Aged 34 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,

South Central Railway, Vijayawada.

20. P. Satish Babu, S/o. Venkateswara Rao,  
Aged 31 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Vijayawada.
21. M. Vijaya Kumar, S/o. M. Venkateswara Rao,  
Aged 33 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Vijayawada.
22. K. Durganarayana, S/o. Appa Rao,  
Aged 35 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Vijayawada.
23. V. Anka Raju, S/o. V. Konda Raju,  
Aged 32 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Vijayawada.
24. A. Chakrapani, S/o. P.Y.S. Agnihotram,  
Aged 37 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Vijayawada.
25. K.V.R.V. Prasada Rao, S/o. Sri Kavali Rama Rao,  
Aged 39 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Vijayawada.
26. P. Jagadeeswara Rao, S/o. Ananda Rao,  
Aged 36 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Vijayawada.
27. B. Balaram, S/o. B. Ch. Bangari Naidu,  
Aged 30 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Vijayawada.
28. K. Sridhar, S/o. Satyanarayana,  
Aged 32 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Kazipet.
29. Sadu Ramesh, S/o. Krishnaiah,  
Aged 34 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Kazipet.

30. Ch. V. Seshaiah, S/o. Penugondaiah,  
Aged 33 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Kazipet.
31. Ch. Venugopal, S/o. Narsaiah,  
Aged 38 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Kazipet.
32. K. Srinivasa Reddy, S/o. K. Venkata Reddy,  
Aged 39 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Kazipet.
33. K.V.S. Prakash Babu, S/o. K. Subba Rao,  
Aged 33 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Kazipet.
34. B. Prasanna Kumar, S/o. Madhusudan,  
Aged 33 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Kazipet.
35. Mohd. Afzaluddin, S/o. K.A. Nayeem,  
Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Kazipet.
36. K. Chandra Kanth, S/o. K. Satyanarayana,  
Aged 31 years, Occ: Senior Asst. Loco Pilot,  
O/o. The Chief Crew Controller,  
South Central Railway, Sanathnagar.

...Applicants

**And**

1. Union of India, Rep. by  
The General Manager,  
South Central Railway, Rail Nilayam,  
Secunderabad.
2. The Chief Personnel Officer,  
South Central Railway, Rail Nilayam,  
Secunderabad.
3. The Senior Divisional Personnel Officer,  
Secunderabad Division, Sanchalan Bhavan,  
South Central Railway, Secunderabad.
4. B. Srinivas,  
Occ: Senior Assistant Loco Pilots,

- O/o. The Chief Crew Controller,  
South Central Railway, Kazipet.
5. A. Nagaraju,  
Occ: Senior Assistant Loco Pilots,  
O/o. The Chief Crew Controller,  
South Central Railway, Kazipet.
  6. V.V.S.S.S. Suresh, Aged 42 years,  
Design:- Office Superintendent, Ex. Sr. Assistant Loco Pilot,  
S/o. V.M. Rama Murthy,  
H. No. 12-11-1485, Ground Floor,  
Giridhar Navas, Ragavendra Nagar,  
Warasiguda, Secunderabad.
  7. M. Srinivas Rao, aged 46 years,  
Design: Loco Pilot (Goods)/BZA/SC  
S/o. M. Venkataratnam,  
Flat No.202, Sri Lakshmi Sai Enclaves,  
BMPS Road, Prasadampadu,  
Vijayawada, Krishna District.
  8. Y.C. Ajay Babu, Aged 49 years,  
Design: Loco Pilot (Goods)/BZA/SC  
S/o. Y.D. Ramaiah,  
D. No. 42-27-8, Block No. 20,  
Rail Track Road, Ajithsingh Nagar,  
Vijayawada – 15 (AP).
  9. P. Satyanarayana, aged 45 years,  
Design: Chief Booking Clerk, Ex. LP (Goods),  
S/o. P. Simhachalam,  
Flat No.9, D. No. 31.3.21, Bhargavi Towers,  
Masjid Street, Maruthinagar,  
Vijayawada, Krishna Dist.
  10. T. Srinivas, Aged 48 years,  
Design: Officer Superintendent, Ex. LP (Goods),  
S/o. Galaiah, H. No. 25-8-669/1,  
Shanthi Nagar, Kazipet, Warangal Urban Dist.
  11. T. Nagaraju, aged 47 years,  
Design: Loco Pilot (Goods)/BZA/SC  
S/o. T. Rarggiah, C/o. M. Koteswar Rao,  
D. No. 47-10-14/A, Sri Sai Gardens,  
Chinna Rice Mill Road, Vijayawada, Krishna Dist.
  12. M. Sreenivasulu, aged 46 years,  
Design: Loco Pilot (Goods)/KZJ/SC,  
S/o. Kistaiah, H. No. 25-8-628/3,  
Shanti Nagar, Diesel Colony, Kazipet.

13. Mohd. Abdul Hakeem, aged 48 years,  
Design: HTTE, Ex. Sr. ALP,  
S/o. Md. Aziz, H. No. 1055/A, Hills Colony,  
Opp. To Canara Bank, Madikonda Mandal,  
Kazipet, Warangal District.

...Respondents

Counsel for the Applicants	...	Mr. KRKV Prasad
Counsel for the Respondents	...	Mr. T. Hanumantha Reddy, SC for Railways Mr. G. Trinadha Rao, Advocate for RR 4 to 13

**CORAM:**

*Hon'ble Mr. B.V. Sudhakar* ... *Member (Admn.)*

*Hon'ble Mr. Swarup Kumar Mishra* ... *Member (Judl.)*

**ORDER**

*{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}*

The OA is filed for inaction of the respondents in correctly assigning the seniority of the applicants who are direct recruits in the entry grade of Asst. Loco Pilot vis a vis the seniority of the promotes

2. Brief facts of the case are that the applicants were appointed as Trainee Diesel Assistants through RRB (Railway Recruitment Board) against direct recruitment quota in 2004. They were directed for training on 16.8.2004 and absorbed on 22.3.2005. Albeit the training is for 39 weeks they were given independent charge on 22.3.2005 itself. Thereafter they were promoted as Asst. Loco Pilots and then on as Sr. Asst Loco Pilot in 2009-2011 and are due for promotion for Loco Pilot (Goods). Simultaneously 15 candidates selected as Asst. Loco Pilots against 50 percentage departmental quota were directed for training on 24.11.2004 and were given independent charge on 17.3.2005 though they were expected to undergo 37 weeks of training. As per para 302 of IREM Vol –I in category of posts which are filled both by the direct recruits and promotees the seniority is fixed from the date of promotion after due process for

the promotees and the date of joining of the post after due process for the direct recruits. However, if the training is curtailed for direct recruits on administrative grounds the seniority will be counted from the date they would have come to a working post after completion of the prescribed period of training. The applicants version is that as per the said training schedule the applicants and the promotees would have completed the training on 11.5.2005 and 26.5.2005 respectively. It is alleged by the applicants that the seniority list has not been released either in Asst. Loco Pilots grade or Sr. Asst. Loco Pilots at regular intervals as per prevailing rule and hence the applicants were not aware of the relative seniority. In the meanwhile the 3<sup>rd</sup> respondent upgraded the promotees to the post of Sr Asst. Loco Pilot on 22.5.2008 and there on as Loco Pilot (Goods) on 15.3.2011 by placing them at sl 240 to 248 in the seniority list. The applicants were promoted as Sr Asst. Loco Pilot in June/ Aug 2011. The applicants represented on 29.4.2010 to the 3<sup>rd</sup> respondent and to the Divisional Railway Manager on 13.4.2011 but there was no response. The 4<sup>th</sup> and the 5<sup>th</sup> respondents have been impleaded on a representative capacity. However, by filing MA 146/18 which was allowed another 8 private respondents got impleaded themselves as private respondents from 6 to 13 in the OA. Aggrieved by the improper fixation of the seniority by giving undue weightage in seniority to the promotes hampering applicants career the present OA is filed.

3. The contention of the applicants is that the seniority was not circulated and as a result they were not aware of their position in the seniority list. The respondents have not adhered to the instructions contained in para 302 and para 303 of IREM resulting in junior promotes being promoted as Sr. Asst. Loco Pilots and Loco Pilot (Goods) ahead of the applicants. No end of the training exam was conducted to prepare the seniority list as per rules on the subject. Any

seniority list prepared without the said exam is invalid and in such circumstances the RRB merit list has to be considered for drawing up the seniority list. The applicants claim that the Railway Board has done so in respect of Vijayawada division when a similar problem cropped up. Even this Tribunal in OA 874/05 has suggested to the Railway Board to consider RRB merit list to solve the preparation of the seniority list when an end of the training exam was not conducted. The applicants being running staff they are always on the move and hence they are likely to miss circulars. This is a genuine practical problem they face. Seniority has to be respected and the respondents action of promoting juniors is illegal. Respondent choosing to remain silent with reference to the representations made on the subject supports their contention that all is not well with the fixation of the seniority list.

4. The respondents intimate that the applicants training was curtailed and posted as Asst. Loco Pilots on 22.3.2005. Respondents reiterate the Railway Board instructions contained in Lr dt. 7.4.1982 and 27.11.90 which ordain that once training is curtailed seniority would be counted from the date one would have normally joined a working post after completion of the prescribed training and that the candidate will get all benefits except seniority and benefit of increment. Therefore as per these instructions the applicants seniority in Trainee Asst. Loco Pilot will be reckoned from 16.5.2005, after completion of 39 weeks of training. The respondents assert that the proviso of para 303 (a) of IREM Vol –I as explained above does not apply to promotes. The promotees were absorbed in the post of Diesel/Electrical Asst. Driver on completion of training on 7.5.2005 and orders were signed to this effect on 14.5.2005 by the competent authority. The seniority list of the applicants including the private respondents was circulated vide DRM letter CP/563/P.11/I/ALP/ seniority dt 30.8.2007 and



earlier vide letter dt. 18.8.2004. In fact, para 321 (a) of IREM Vol I provides the right to the applicants to know about their seniority which they did not use. However, applicants raising an objection after 4/5 years of release of the seniority list is against Para 321(b) of IREM vol-I wherein it is stated that any representation about seniority has to be made within a period of one year of publishing the seniority list. Further the respondents also contend that as per Railway Board letter E (NG) I/68/PM 1/60 dt 29.8.1968 an employee can represent against non selection to a selection post within a period of 2 months from the date of publication of the final panel. The applicant raising an objection at a belated date does contravene the cited instructions. Besides, in regard to seniority in the Loco Pilot (Goods) the post of Sr. Asst. Loco Pilot being the second feeder grade for Loco Pilot (Goods) and due to non availability of required number of employees in the immediate lower grade post of Loco Pilot (Shunting) Gr-I and Gr-II, the promotes were considered and adjudged suitable for promotion to the post of Loco Pilot (Goods) and accordingly the select list was released on 15.3.2011. As per rule cited above any representation against the select list shall lie within 2 months from the date of selection, which the applicants did not avail. The respondents reaffirm that the seniority list is widely publicised by placing them in notice boards, providing copies to the concerned supervisors and the applicants have every right to know about their seniority as per relevant IREM provision since it is not a secret document. Finally the respondents claim that the OA suffers from delay and laches and hence should not be entertained.

5. The private respondents in their reply statements dated 20.6.2018 have taken objection on the ground that all those who would be adversely affected, if the OA is allowed, have to be made a proper and necessary parties since they

have to be heard before deciding against them. Without doing so the OA is not maintainable for non joinder of relevant parties. The impleading of private respondents 4 and 5 in a representative capacity without the permission of the Tribunal is illegal. Indeed the applicants accepted promotion to Sr. Asst Loco Pilot in 2009/2011 subsequent to the private respondents being promoted in 2009, based on the seniority list released in the cadre of Asst Loco Pilot on 30.8.2007. The fact that the private respondents were further promoted as Loco Pilots (Goods) in 2011 cannot be denied based on the available seniority list. Therefore the applicants are estopped from challenging the promotion of the private respondents after a lapse of 7 years after appointment as Asst. Loco Pilot and 5 years of publishing the seniority list on 30.8.2007. As per provisions of the Administrative Tribunals Act repeated representations would not give any fresh cause of action. Moreover, the applicants are only challenging the promotion of the private respondents to the posts of Asst. Loco Pilot and loco Pilot but not the seniority list dt 30.8.2007 which formed the basis for the promotions and hence the OA is non maintainable as per law. If at all, there was any cause of action it was only when the seniority list was published on 30.8.2007 and not anytime later. The applicants did not represent in time nor did they file any MA for condonation of delay and hence OA has to be dismissed. Private respondents do claim that once seniority has been settled it cannot be changed as per law. They also contend that the provisional panel selecting them was approved on 6.8.2004 which is ahead of the panel of the direct recruits. According to Para 137 of IREM the promotees have prior claim in regard to appointment and consequential seniority. The Private Respondents also make it clear that they joined the post on 7.5.2005 and hence have to be considered as having been absorbed on 7.5.2005 itself. Even if the proceeding dated 14.5.2005 is

considered as date of absorption yet they rank senior to the applicants. The provisions of the note under para 302 of IREM –vol- I ,when applied the private respondents rank senior to the applicants handsomely since they were absorbed on 7.5.2005 in contrast to the applicants on 16.5.2005. Therefore the OA deserves to be dismissed.

6. Heard the ld counsel and perused the relevant documents.

7. The ld. Counsel for the applicants has contended that the seniority list published on 30.8.2007 was not circulated. No end of the exam was conducted after the training to prepare the true seniority list. Hence any seniority list prepared is infructuous. In fact, when such a similar situation arose in Vijayawada division where end of the training was not conducted, the Railway Board vide lr dt 6.9.2007 as one time exception has given permission to fix seniority based on RRB merit position in compliance to the directions of this tribunal in OA 874/2005 and OA 02/2006. On a representative capacity private respondents were impleaded and that now 6 to 13 have also joined as private respondents to the OA, there cannot be any objection in regard to non joinder of parties. The learned counsel cited certain Honourable Supreme Court observations to support his arguments to further the cause of the applicants.

8. The learned counsel for private respondents has claimed that the first representation made by the applicants was on 29.4.2010 and that subsequent representation do not count for limitation. Therefore the OA filed in 2012 has to be rejected on grounds of limitation and more so when no MA was moved for condonation of delay. The claim of the applicants is stale and such claims should not be entertained as per law. The learned Counsel for the private respondents

did also quote some Honourable Supreme Court observations to defend the case of the private Respondents from 4 to 13.

9. The learned counsel for the respondents claimed that the claim of the applicants is belated and that they acted as per rules on the subject which do not provide any scope to consider the case of the applicants. Changing the seniority list at this distant date would upset the apple cart and would have far reaching cascading impact which will not be in administrative interest.

10. Primarily the case deals with two sets of employees namely the direct recruits and the promotees in regard to seniority and consequent impact on their career. The applicants have impleaded two of the promotes as private respondents on a representative basis, which was objected to by the learned counsel for the private respondents stating that the applicants have no right to implead on representative capacity without the permission of the Tribunal. However, as pointed out by the learned counsel for the applicants, the Honourable Supreme Court in V.P. Shrivastava v State of M.P reported in CA no 2769 of 1996 has held at para 14 that in regard to seniority, if State is made the necessary party, then the non inclusion of affected parties will be unsustainable in law. Nevertheless, another 8 more promotees have got impleaded themselves as private respondents to the OA by MA 146/18 which gives the required representation. Out of 15 promotees in the panel 5 were medically decategorised and only 10 were in the loco running cadre as per version of the applicants. Thus 10 of the promotees are now parties to the OA. The counsel for the private respondents to support his cause did cite the Honourable Supreme Court Judgment in Udit Narain Singh Malpaharia vs Additional Member, Board of

Revenue reported in 1963 AIR 786, 1963 SCR Supl. (1) 676 where in it was held that:

*“It would be against all principles of natural justice to make an order adverse to them behind their back, and any order so made could not be an effective one. They were therefore necessary parties before the High court. The Record discloses that the appellant first impleaded them in his petition but struck them out at the time of the presentation of the petition. He did not file any application before the High Court for impleading them as respondents. In the circumstances, the petition filed by him was incompetent and was rightly rejected.”*

As is seen in the cited case, effected parties were not at all impleaded but in the present case the State being a party, as required by the Honourable Supreme Court, in the present O.A and majority of the private respondents contesting the issue, does satisfy the spirit of the Honourable Supreme Court observation of ensuring that the other side is adequately heard.

11. Going into the further details of the case, it is evident that the applicants and the private respondents were selected for the same post of Asst. Loco Pilots . Applicants through direct recruitment and the private respondents against 50 percent departmental quota. Both went for training but the period of training for the direct recruits was 39 weeks and whereas for the promotes it was 37 weeks. However, due to administrative exigencies their training was curtailed and were given independent charge. As per note appended to para 302 of IREM Vol –I , the date of joining the working post for the direct recruit shall be the date they would have normally come to a working post after completion of the prescribed period of training which is 16.5.2005 for the applicants. In contrast for the promotees normal course of training completes on 7.5.2005 and accordingly absorbed on 7.5.2005. Even by taking the date of signing of the proceedings on

14.5.2005 posting them as Dsl/Elec. Asst. Drivers vide O.O No. 48/ELR/05/2005, the promotees stand senior to the direct recruits. Therefore on merits the promotees are senior. Accordingly the combined senior list was published on 30.8.2007. It was displayed in notice boards and given to the concerned supervisors. It not being a secret document could be accessed by invoking clause 321 (a) of IREM vol-1. Moreover, Govt employees need necessarily know as to where they stand. Seniority decides the future career of the employee and neglecting to know the seniority goes against the interest of the employee. Crying hoarse that it was not circulated does not speak well about the employee and the interest he takes in the events happening in the organisation, particularly those which are of utmost importance to him. Pleading that the settled seniority list be revised after 4 to 5 years will unsettle the very working of the organisation for the fault of the applicants and not of any one. Even para 321 (b) of IREM vol –I prohibits any representation being made after one year of publishing the seniority list. The learned counsel for the applicant explains the delay by taking cover of the observation of Honourable Supreme Court in Shiba Shankar Mohapatra v State of Orissa reported in CA 7537-7541 of 2009 where in it was held as under:

*29. Thus, in view of the above, the settled legal proposition that emerges is 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. In K.R Mudgal, (AIR 1986 SC 2086) (supra), this Court has laid down in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation.”*

The Honourable Supreme Court did give room to challenge the seniority list in a span of 3-4 years but nowhere it was adduced that the process to do so can be short circuited. The process was to file a MA for condonation of delay as per section 21 (3) of the Administrative Tribunal Act 1985. In fact Honourable Supreme Court observation in Ramesh Chand Sharma etc Vs Udam Singh Kamal and ors on 12.10.1999 reported in Appeal ( civil) 3119 of 1997 has held as under while dealing with section 21 of the Administrative Tribunal Act :

*“Relying upon the aforesaid provisions, it was contended on behalf of the appellants that the O.A filed by the first respondent Udham Singh Kamal was barred by limitation. No application for praying for condonation of delay was filed. In the absence of any application under sub section (3) of section 21 praying for condonation of delay, the Tribunal had no jurisdiction to admit and dispose of O.A on merits. It was, therefore contended that the Tribunal has totally overlooked the statutory provision contained in section 21 of the Act and, therefore impugned order be set aside. ”*

12. Hence the crucial element of not moving an MA has made the OA non maintainable. Furthermore the claim is stale since the applicants did not agitate for years together when the seniority list was finalised on 30.8.2007 and the private respondents were upgraded to the cadre of Sr Asst Loco Pilot on 22.5.2008. In fact as per Railway Board letter dt 29.8.1968 an employee has to represent about non selection to a selection post within 2 months of publication of the final panel. The applicants did not do so, but doing so after lapsation of many years would obviously brand the claim as stale. Such stale claims if acted upon would unsettle the settled prepositions leading to unwarranted confusion and administrative instability. Defacto, in regard to stale claims the Honourable Supreme court has observed in Shiba Shankar Mahapatra v State of Orissa reported in CA 7537-7541 of 2009 where in it was held as under:

*23. In P.S .Sadasivaswamy v State of T.N., AIR 1974 SC 2271 this Court considered the case where the petition was filed after lapse of 14 years*

*challenging the promotion. However, this Court held that aggrieved person must approach the Court expeditiously for relief and it is not permissible to put forward stale claim. The Court observed as under:*

*“A person aggrieved by an order promoting a junior over his head should approach the Court at least within 6 months or at the most a year of such promotion”*

*24. The Court further observed that it was not that there was any period of limitation for the Courts to exercise their powers under Article 226 nor was it that there could never be a case where the Courts cannot interfere in a matter after certain length of time. It would be a sound and wise exercise of jurisdiction for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of person who do not approach it expeditiously for relief and who standby and allow things to happen and then approach the court to put forward stale claim and try to unsettle settled matters.”*

13. In the present case the private respondents were not only promoted as Sr. Asst. Loco pilot on 22.5.2008 based on the seniority published on 30.8.2007 but they were further promoted as Loco Pilot (Goods) on 15.3.2011. The clock has thus moved to this extent and reversal of the clock would only lead to degradable results in the present case. There are a catena of judgments of Superior Judicial forums which draw the Laxman Rekha of not to unsettle a settled seniority list. They are cited below which do strengthen the case of respondents. An observation which is evergreen in the arena of seniority list litigation made by the Honourable Supreme Court in Dr Akshya Kumar Bisoi vs All India Institute of Medical reported in writ petition (civil) No 1179 of 2017 at para 23 is as under:

*“23. For the above reasons, we have come to the conclusion that the grant of relief would unsettle the inter se seniority between the petitioners and the Fourth respondent well over twelve years since the recommendation of the Selection Committee for appointment as Additional Professors. This cannot be done. Some expressions of opinion in favour of First petitioner in the departmental processes may have engendered as sense of hope. But that cannot furnish a legal ground to unsettle something that has held the field for long years .”*



14. Time and again the Superior judicial forums have been directing not to tinker with the well settled seniority list unless there are exceptionally justifiable grounds. The observation of Honourable High Court of Allahabad, in *Vijay Kumar Singh vs State of U.P* vide WP no 642 (SB) of 2015 elaborates the need to stay away from altering a well established seniority list as under:

*“It is well settled by a catena of judgments of the Supreme Court that long standing seniority should not be altered. Reference may be made in this regard to the decision of the Supreme Court in the case of B.S Bajwa vs State of Punjab and ors , reported in AIR 1999 SC 1510 wherein their Lordships observed as under:*

*“ It is well settled that in service matters , the question of seniority should not be reopened in such situations after the lapse of reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. ”*

Further in the case of *H.S. Vanikani and ors vs State of Gujarat and ors* reported in (2010) 4 SCC 301 their Lordships held as under:

*“25. Seniority is a civil right which has an important and vital role to play in one’s service career. Future promotion of a Government Servant depends either on strict seniority or on the basis of seniority –cum – merit or merit –cum –seniority etc. Seniority once settled is decisive in the upward march in one’s chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instils confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of one’s junior in service is unsettled, it may generate bitterness, resentment, hostility among the Government servants and the enthusiasm to do quality work might be lost . Such a situation may drive the parties to approach the administration for resolution of that acrimonious and poignant situation, which may consume lot of time and energy. The decision either way may drive the parties to litigative wilderness to the advantage of legal professionals both private and Government, driving the parties to acute penury. It is well known that salary they earn, may not match the litigation expenses and professional fees and may at time drive the parties to other sources of money making including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further it also consumes lot of judicial time from the lowest court to the*

*highest resulting in constant bitterness among the parties at the cost of sound administration affecting public interest. Courts are repeating the ratio that the seniority once settled, shall not be unsettled but the men in power often violate that ratio for extraneous reasons, which, at time calls for departmental action. Legal principals have been reiterated by this Court in Union of India and anr vs S.K Goel and ors (2007) 14 SCC 641, T.R Kapoor v State of Haryana (1989) 4 SCC 71, Bimlesh Tanwar V State of Haryana, (2003) 5 SCC 604.*

The decision of the Supreme Court in the case of K.R.Mudgal and others vs R.P. Singh and ors reported in AIR 1986 SC 2086 is also to the same effect.

In view of the aforesaid pronouncements specially considering the fact that the seniority list dated 3.9.2004 was acted upon and further promotions were made including that of the petitioner and opposite party no 4 who did not challenge the said seniority list within a reasonable period and in view of the reasons already indicated herein above, we are of the view that alteration of the seniority list at this belated stage cannot be sustained.

15. To sum up,-

i) challenging the seniority list at this distance of time in the face of many technical deficiencies like not moving an MA for condonation of delay as per Administrative Tribunal Act 1985 is thus not on a winning proposition;

ii) Failure to raise the issue as per rules within 2 months of promotions afforded to the private respondents and hibernating for years and blissfully waking up at their leisure hours, in the meantime, entailed a vested right to the private respondents under the 'Sit back Theory' referred to above;

iii) claiming ignorance of the circulation of the seniority list (an open document) for years together with as long a service seniority as that of the applicants does make it evident that they are not vigilant as to their right but by being indolent, have indirectly forfeited their right for seniority,

iv) for not harnessing the strong point in their favour of not questioning the non conduct of the end of the training exam which is a fundamental requirement to prepare the seniority list for years together, loss of seniority is the penalty courted by the applicant themselves.

16. It is therefore too late in the day for the applicants to seek relief for disturbing the well settled seniority list as per their request. Even moving the judicial forums within a reasonable period of time was not attempted. The Honourable Supreme Court has time and again emphasized the need for timely action to be taken in getting one's seniority rectified but definitely not after matters are well settled in this regard since it will have far reaching consequences for the organisation as a whole. Organisation is made of men and any issue dwelling upon their interests should be within the frame work of law and rules. The law regarding revision of seniority has been well settled as discussed in paras supra. It does not come to the rescue of the applicants. Their plea is not in accordance with the rules. The applicants could not make out even a prima facie case, while the official and the private respondents have made out a cast-iron case and they thus succeed. The O.A thus fails. However this judgment does not devalue the contribution of the applicants over the years to the

respondent organisation, but on the contrary appreciates their unstinted efforts to explore law to further their interests

17. OA is dismissed. No order to costs.

**(SWARUP KUMAR MISHRA)**  
**MEMBER (JUDL.)**

**(B.V. SUDHAKAR)**  
**MEMBER (ADMN.)**

Dated, the 23<sup>rd</sup> day of October, 2018

*evr*