

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

No. OA No. 310 of 2013
OA No. 311 of 2013
OA No. 312 of 2013
OA No. 313 of 2013

Present: Hon'ble Mr. Gokul Chandra Pati, Administrative Member
Hon'ble Mr. Swarup Kumar Mishra, Judicial Member

- OA No. 310/2013 : Sarat Kumar Gajendra, aged about 49 years, S/o Late Jambeswar Gajendra, a permanent resident of At/PO. Kamaguru, PS – Jankia, Dist. – Khurda, presenting residing at Quarter No. Type III/341, New AG Colony, Nayapalli, Bhubaneswar, presently serving as Asst. Audit Officer in the Office of the Accountant General (General and Social Sector Audit), Orissa Bhubaneswar.
- OA No. 311/2013 : Kshirod Kumar Mohanty, aged bout 46 years, S/o Keshab Charan Mohanty, a permanent resident of At/PO Dashipur, Dist.- Kendrapara, presently serving as Asst. Audit Officer in the Office of the Dy. Director of Audit (CRA), cadre controlled by the Accountant General (General & Social Sector Audit), Orissa Bhubaneswar.
- OA No. 312/2013 : Surendranath Nayak, aged about 49 years, S/o Late B.Nayak, permanent resident of At/PO – Chasapada, Dist – Jagatsinghpur, presently serving as Asst. Audit Officer in the Office of the Accountant General (General & Social Sector Audit), Orissa Bhubaneswar.
- OA No. 313/2013: Madan Mohan Sahoo, aged about 49 years, S/o Narayan Sahoo, a permanent resident of Plot No. 936, At/PO Mancheswar, Bhubaneswar, presenting serving as Asst. Audit Officer in the Office of the Accountant General (General & Social Sector Audit), Orissa Bhubaneswar.

.....Applicants.

VERSUS

1. Union of India represented through Comptroller and Auditor General of India, 10 Bahadur Shah Jafar Marg, New Delhi – 10124.
2. Principal Accountant General (Civil Audit) Now re-designated as Accountant General (General and Social Sector Audit) Orissa, Bhubaneswar – 751001.
3. Accountant GBenral (A&E), Orissa, Bhubaneswar.
4. Pruthunath Majhi Asst. Audit Officer, Office of the Accountant General (General and Social Sector Audit) Orissa, Bhubaneswar – 751001.
5. Nabin Chandra Pradhan, Asst. Audit Officer, Office of the Accountant General (General and Social Sector Audit) Orissa, Bhubaneswar – 751001.

.....Respondents.

For the applicant : Mr.S.K.Ojha, counsel

For the respondents: Mr.S.K.Patra, counsel
Mr.R.K.Dash, counsel (Resp. No.4)

Heard on : 11.12.2018

Order on : 20.12.2018

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

All four OAs as listed above are taken up together in the order as these were listed and heard together.

2. The reliefs sought for and brief facts in these OAs are as under :

OA No. 310/2013

The applicant is a pass out of Section Officers General Examination (in short SOGE), 2005 conducted for selection as Section Officer (Audit). He was appointed in Audit Wing on the basis of DPC held in 2006 and submitted a representation regarding seniority on 18.10.2007 which was stated by the official respondents to have been rejected. The applicant submitted another representation on 9.1.2013 which has been rejected vide impugned order dated 31.10.2013 on grounds which are identical/similar to OA No. 311/2013. The grounds advanced by both the parties in this OA are similar to the grounds in OA No.311/2013 except minor differences like the date of impugned order.

OA No. 312/2013

In this case also the applicant is a pass out of SOGE 2005 who was absorbed in Audit Wing on the basis of DPC held in 2006 like the applicant in other three connected OAs. The applicant had also submitted a representation dated 18.10.2007 regarding his seniority which was stated to have been rejected on 17.10.2008. The applicant submitted another representation dated 29.1.2013 which was rejected vide the impugned order dated 14.2.2013 on identical grounds as in OA No.311/2013. The grounds advanced by both the

parties in this OA are similar to the grounds in OA No.311/2013 except minor differences like the date of the impugned order and some other factual details.

OA No. 313/2013

The facts are similar to the OA No. 311/2013. The applicant is a pass-out of SOGE, 2005 who was absorbed in Audit wing on the basis of the DPC held in 2006, like the applicant in OA No. 311/2013. The applicant had earlier submitted the representation dated 18.10.2007 regarding seniority, which was stated by the official respondents to have been rejected on 17.10.2008. The applicant submitted another representation on 9.01.2013 i.e after more than 5 years of the date of submission of first representation dated 18.10.2007 and this representation was rejected vide the impugned order dated 31.01.2013 on the identical ground as in the OA No. 311/2013. The grounds advanced by both the parties in this OA are similar to the grounds in OA No.311/2013 except minor differences like the date of the impugned order and some other factual details.

OA No. 311/2013

In view of the above, all the Oas are disposed of by this common order and OA No. 311/2013 is taken as the lead case in this order.

3. The applicant has filed the OA with the prayer for the following reliefs:-

"In view of the facts stated above the applicant prays that the Hon'ble Tribunal may be pleased to quash the order by which the representation filed by him has been rejected i.e. order dated 14.2.2013 (Annexure A/12)

And further be pleased to direct the respondents more particularly the respondent No.1 and respondent No.2 to allow the applicant batch seniority by showing him senior to the respondent No.4 and respondent No.5.

And further be pleased to direct the respondents to pay all service and financial benefits retrospectively."

4. The facts, in brief, are that the applicant is an employee under the Accountants wing of the office of the Accountant General (in short AG), Odisha. As per the policy decision of the respondent No.1, the eligible employees under

the Accounts wing are made eligible to appear in the Section Officer General Examination (Civil Audit), referred hereinafter in short as SOGE, since adequate number of eligible candidates were not available in the Principal AG (Civil Audit) for filling up the vacancies of Section Officer (in short SO). The employees of the Accounts wing, who have qualified in the SOGE after clearing all the papers, are eligible for being posted as SO (Civil Audit) on adhoc basis to be eventually absorbed as SO in Civil Audit wing of the respondents from the date of their joining as SO (Civil Audit). The terms and conditions for such absorption of the employees of Accounts wing in Civil Audit wing are stipulated in the circular dated 12.08.2003 of the Comptroller & Auditor General (in short CAG), copy of which is placed at Annexure A/1 of the OA. This circular also specifies how the seniority of the employees to be absorbed in Audit wing, will be fixed.

5. The applicant had appeared in the SOGE, 2005 and qualified in all papers as per the result declared in October, 2005 (Annexure A/2). The applicant submitted a representation dated 14/18.11.2005 (Annexure A/3) requesting to be absorbed in the Audit wing. Vide the circular dated 13.06.2006 (Annexure A/5) was issued inviting the willing eligible officials to apply for absorption in the Civil Audit offices as SO. In response, the applicant submitted his application in the specified format which was forwarded vide letter dated 24.07.2006 (Annexure A/7). As stated in the OA, no action was taken by the official respondents till the results of the SOGE, 2006 results were declared on 7.08.2006. Thereafter, the respondent no. 2 convened a Departmental Promotion Committee (in short DPC) after 7.08.2006 to consider the cases of the SOGE passed candidates for promotion to SO (Civil Audit). Just after the DPC, the employees of the Civil Audit wing, who had cleared the SOGE 2006 and the DPC, were issued the promotion order. Thereafter, vide order dated 19.10.2006 (Annexure A/8), the applicant was absorbed as SO (Civil Audit), alongwith another employee of Accounts wing i.e. Sri Chandra Kishore

Agarwala who had cleared the SOGE and was posted on deputation as SO (Civil Audit) since 2004.

6. Vide the representation dated 4.08.2008 (Annexure A/9), the applicant requested to place his seniority just below the promotees of 2005 and above SOGE 2006 passed out employees, as the applicant was passed out in SOGE, 2005. It was stated in the representation that the applicant was entitled for seniority above 2006 passed out employees as per the circular dated 12.08.2003 (Annexure A/1). Applicant states that although the respondent no. 1 issued a clarification dated 3.10.2008 about seniority to be assigned from the date of joining of the applicant in Audit wing as SO (Civil Audit) in response to the demand made by the respondent no. 2, but the seniority list dated 1.01.2013 (Annexure A/11) still showed the applicant's seniority to be below the respondent no. 4 & 5, who are SOGE 2006 passed out employees and instead of taking action to correct the seniority list in accordance with the instructions dated 3.10.2008 of the respondent no. 1, the official respondents have rejected his representation at Annexure A/12 for correcting the seniority list.

7. The averments in the Counter Reply (in short CR) filed by the official respondents include the following points, without disputing basic facts:-

(i) The date of joining/absorption of the applicant in the Audit office is crucial factor for determining the seniority in the cadre of SO (Audit). Earlier representation dated 18.10.2007 of the applicant (Annexure R/1) was disposed of on 17.10.2008 accordingly, based on the clarifications received from the CAG's office. Although it was communicated to the applicant, he submitted another representation dated 1.02.2013 and in reply, the letter dated 14.02.2013 (impugned order) was communicated to the applicant informing him that his seniority would be from his date of joining as SO (Audit) as per the instructions received from CAG's office.

(ii) Sri Chandra Kishore Agarwalla passed out SOGE in 2004 and was appointed in Audit office as SO on 9.02.2005 against the available vacancy. Subsequently, he was absorbed as SO (Audit) from 9.02.2005 and his seniority was fixed above the pass-outs of the SOGE-2005 from Audit office. Seniority of Sri Agarwalla was not fixed on the basis of the year of passing of the SOGE, but on his date of joining as SO (Audit).

(iii) The applicant had submitted his willingness to be absorbed in Audit office which was forwarded by the respondent no.3 on 18.11.2005, without inviting any such application by the Audit office. No action on such letter could be taken since the vacancies in the cadre of SO (Civil Audit) in the office of the respondent no. 2 were already filled up from eligible Audit staff. After ascertaining the vacancy position, circular dated 13.06.2006 was issued inviting application from SOGE passed out employees of the Accounts wing for absorption in Audit wing. But immediately after the last date was over, result of SOGE, 2006 was declared on 7.08.2006. Successful Audit staff were also considered by the DPC for promotion to the post of SO (Audit) alongwith the applications received from the office of the respondent no.3 for absorption of all 11 applicants for the post of SO (Audit). The Audit staff found suitable were appointed first against the vacancy of SO (Audit) as per the circular dated 12.08.2003 and then the applicant alongwith other employees of Accounts wing found suitable by the DPC were appointed. As per the circular dated 12.08.2003, the Audit staffs were given higher seniority than the applicant.

(iv) It was reiterated that the applicant could not be absorbed in Audit office immediately after passing out in SOGE 2005 due to non-availability of vacancy in the SO (Audit) cadre (vide para 14 of the CR).

8. In the Rejoinder filed by the applicant, it is stated that the applicant was not served a copy of the decision on his first representation dated 18.10.2007, for which he had to submit the second representation dated 1.02.2013. It is

further stated that on earlier occasions, the seniority was given based on the year of passing of the SOGE. But in the case of the applicant, he was not allowed the seniority of his batch of the passed-outs of the SOGE, 2005. Regarding vacancy position, it is stated in the Rejoinder that Sri Agarwala was posted in Audit office on 9.02.2005 without inviting any application for absorption and he was allowed ante-dated seniority in spite of the fact that there was no vacancy. The respondents de-reserved a reserved category post to accommodate Sri Agarwala, but no such concession was given to the applicant. The document at Annexure R/10 shows that the combined vacancy of SO and AAO was 36 as on 1.11.2005, which was considered while considering promotion to 14 SOGE-2005 pass-out employees on 9.11.2005, but this was not followed while considering the representation dated 18.11.2005 of the applicant.

9. The private respondent no. 4 has also filed counter stating that the seniority of the applicant and the private respondents have been correctly assigned in accordance with the instructions of the CAG. It is also stated that the seniority of Sri Agarwala has been allowed from the date of his joining on deputation, not from the date of absorption after the DPC recommendation in the year 2006. It is pointed out that it is violation of the instructions of CAG at Annexure A/10. It is also stated that the mistake cannot be treated as a precedent and the applicant cannot get its benefit in view of the judgment of Hon'ble Apex Court in the case of **State of Bihar vs. Upendra Narayan Singh [2009(5) SCC 65]**.

10. Learned counsel for both the parties were heard and the pleadings on record were perused by us. The questions to be answered are as under:-

(i) Whether the applicant has taken steps in time after disposal of his representation dated 18.10.2007.

(ii) Whether in accordance with the CAG's guidelines/circulars dated 12.08.2003 (annexure A/1), 6.12.2005 (Annexure A/4) and 3.10.2008 (Annexure A/10), the applicant is entitled for the seniority as per the

year of passing the SOGE or as per the date of joining/absorption in the cadre of SO (Audit).

11. Regarding the issue at (i) of para 7 above, the respondents have stated in their counter reply that first representation dated 18.10.2007 was rejected vide letter dated 17.10.2008 based on the clarification dated 3.10.2008 of the respondent no.1. But the applicant's stand is that he was never communicated the letter dated 17.10.2008. Then he submitted another representation dated 1.02.2013 which was rejected by the impugned order dated 14.02.2013 (Annexure A/12). It is noticed that the order dated 14.02.2013 did not mention anything about the letter dated 17.10.2008, although reference to the clarification dated 3.10.2008 from the respondent no.1 was made. Hence, we proceed with assumption that the averment of the applicant that he was not served with a copy of the letter dated 17.10.2008 on his first representation. Even then, no explanation for waiting till 1.02.2013 for submitting the second representation after a lapse of more than five years from the date of first representation dated 18.10.2007, has been furnished by the applicant.

12. We take note of the law settled by Hon'ble Apex Court that the seniority disputes cannot be raised after a delay since rights of other parties might have accrued in the mean time. In the case of **Union of India and Ors. Vs. Tarsem Singh, [(2008) 8 SCC 648]**, it was held by Hon'ble Supreme Court as under:-

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases 5 relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential

relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

It is clear from the ratio of above judgment that delay in raising the seniority disputes cannot be accepted since these involve the right of other parties would be affected. In this OA, the applicant was aware about his seniority in 2007, for which he submitted the representation dated 18.10.2007, but he remained silent till 2013 when no decision on the dispute was communicated to him.

13. In the case of **Shiba Shankar Mohapatra & Ors vs State Of Orissa & Ors.** [(2010) 12 SCC 471], it was held as under:-

"18. The question of entertaining the petition disputing the long standing seniority filed at a belated stage is no more res integra. A Constitution Bench of this Court, in [Ramchandra Shanker Deodhar & Ors. v. State of Maharashtra & Ors.](#) AIR 1974 SC 259, considered the effect of delay in challenging the promotion and seniority list and held that any claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have accrued to them during the intervening period. A party should approach the Court just after accrual of the cause of complaint. While deciding the said case, this Court placed reliance upon its earlier judgments, particularly in [Tilokchand Motichand v. H.B. Munshi](#), AIR 1970 SC 898, wherein it has been observed that the principle, on which the Court proceeds in refusing relief to the petitioner on the ground of laches or delay, is that the rights, which have accrued to others by reason of delay in filing the writ petition should not be allowed to be disturbed unless there is a reasonable explanation for delay. The Court further observed as under:-

"A party claiming fundamental rights must move the Court before others' rights come out into existence. The action of the Courts cannot harm innocent parties if their rights emerge by reason of delay on the part of person moving the court."

19. This Court also placed reliance upon its earlier judgment of the Constitution Bench in [R.N. Bose v. Union of India & Ors.](#) AIR 1970 SC 470, wherein it has been observed as under:-

"It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be defeated after the number of years."

20. In [R.S. Makashi v. I.M. Menon & Ors.](#) AIR 1982 SC 101, this Court considered all aspects of limitation, delay and laches in filing the writ petition in respect of inter se seniority of the employees. The Court referred to its earlier judgment in [State of Madhya Pradesh & Anr. v. Bhailal Bhai](#) etc. etc., AIR 1964 SC 1006, wherein it has been observed that the maximum period fixed by the Legislature as the time within which the relief by a suit in a Civil Court must be brought, may

ordinarily be taken to be a reasonable standard by which delay in seeking the remedy under [Article 226](#) of the Constitution can be measured. The Court observed as under:-

"We must administer justice in accordance with law and principle of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set-aside after the lapse of a number of years..... The petitioners have not furnished any valid explanation whatever for the inordinate delay on their part in approaching the Court with the challenge against the seniority principles laid down in the Government Resolution of 1968... We would accordingly hold that the challenge raised by the petitioners against the seniority principles laid down in the Government Resolution of March 2, 1968 ought to have been rejected by the High Court on the ground of delay and laches and the writ petition, in so far as it related to the prayer for quashing the said Government resolution, should have been dismissed."

21. The issue of challenging the seniority list, which continued to be in existence for a long time, was again considered by this Court in [K.R. Mudgal & Ors. v. R.P. Singh & Ors.](#) AIR 1986 SC 2086. The Court held as under:-

"(2) A government servant who is appointed to any post ordinarily should at least after a period of 3-4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity.

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(7) Satisfactory service conditions postulate that there shall be no sense of uncertainty amongst the Government servants created by writ petitions filed after several years as in this case. It is essential that any one who feels aggrieved by the seniority assigned to him, should approach the Court as early as possible otherwise in addition to creation of sense of insecurity in the mind of Government servants, there shall also be administrative complication and difficulties.... In these circumstances we consider that the High Court was wrong in rejecting the preliminary objection raised on behalf of the respondents to the writ petition on the ground of laches."

22. While deciding the case, this Court placed reliance upon its earlier judgment in [Malcom Lawrance Cecil D'Souza v. Union of India & Ors.](#) AIR 1975 SC 1269, wherein it had been observed as under:-

"Although security of service cannot be used as a shield against the administrative action for lapse of a public servant, by and large one of the essential requirement of contentment and efficiency in public service is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in a seniority list after having been settled for once should not be liable to be re-opened after lapse of many years in the instance of a party who has itself intervening party chosen to keep quiet. Raking up old matters like seniority after a long time is likely to resort in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service

that such matters should be given a quietus after lapse of some time."

23. In [B.S. Bajwa v. State of Punjab & Ors.](#) AIR 1999 SC 1510, this Court while deciding the similar issue re-iterated the same view, observing as under:-

"It is well settled that in service matters, the question of seniority should not be re-opened 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. This along was sufficient to decline interference under [Article 226](#) and to reject the writ petition".

24. In [Dayaram Asanand v. State of Maharashtra & Ors.](#) AIR 1984 SC 850, while re-iterating the similar view this Court held that in absence of satisfactory explanation for inordinate delay of 8-9 years in questioning under [Article 226](#) of the Constitution, the validity of the seniority and promotion assigned to other employee could not be entertained.

25. In [P.S. Sadasivaswamy v. State of Tamil Nadu](#) AIR 1975 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."

14. Learned counsel for the official respondents in OA 310/2013 has cited the judgment of Hon'ble Supreme Court in [B.S.Bajwa \(supra\)](#) [1998 (2) SCC 523]. As per this judgment the question of seniority should not be re-opened after a lapse of reasonable period as discussed in para 13 above.

15. In view of the case law as discussed above, we consider the claim of seniority of the applicant, cause of action for which arose in 2006, raised before this Tribunal in 2013 by way of this OA is delayed and suffers from laches. Hence, the OA is not admissible on the ground of delay.

16. Regarding the issue at (ii) of para 7, the circular dated 12.08.2003 of the CAG states as under:-

"All the A&E candidates on their absorption as Section Officer (Audit) shall rank below the promotes of Civil Audit Office promoted as Section Officers (Audit) on the same occasion."

Above instruction uses the words "on the same occasion". While the applicant's counsel submits that it meant "the same SOGE", the respondents' submissions implied that it meant "the same DPC which considered the cases for promotion as SO (Audit)".

17. The letter dated 3.10.2008 of the CAG (Annexure A/10) stated as under:-

"I am directed to invite a reference to your office letter No. Admn/CA/3-I-Vol.VIII/07-08/986 dated 04.08.2008 on the subject cited above and to clarify that the SOGE (Civil Audit) passed officials of the A&E Offices would be treated as absorbed to the post of Section Officer (Audit) from the date they joined in your office in response to the demand circulated by your office for filling the vacant posts of Section Officer (Audit) through absorption."

From above letter it is clear that the date of joining in the Audit office as SO in response to the demand for the SOGE passed out Accounts staff circulated by the respondent no. 2, would be relevant for deciding the date of absorption. It would imply that the seniority in the cadre of SO (Audit) would be from the date of joining in response to such demand.

18. It is seen that the letter dated 6.12.2005 of the CAG (Annexure A/4) has stated regarding seniority as under:-

"(i) Absorbees shall be placed immediate below the last SOGE (Civil Audit) Part-II passed candidates of the office concerned promoted as Section Officer on or before the date of such absorption.

(ii) Absorbees who have passed SOGE (Civil Audit) Part-II held in May, 2004 will rank enblock senior to the absorbees who have passed the above examination held in later batch (May-June, 2005).

....."

Learned counsel for the applicant refereed to sub-para (ii) above to argue that the seniority has to be allowed based on the year of passing of the examination. We are unable to agree with such contention since the sub-para (ii) above will be applicable for deciding the inter-se-seniority of the absorbees (i.e. the Accounts staffs) who are absorbed in the Audit wing. It will not apply for deciding the inter-se-seniority between Accounts and Audit staffs, who have passed the SOGE and for that the sub-para (i) above would be relevant, which stipulates the date of absorption in the cadre of SO (Audit) to be the criteria for the purpose. From the reading of the circulars dated 12.08.2003 and 6.12.2005 would imply that the reference to "the same event" in para 3(i) of the

circular dated 12.08.2003 would mean to be "the same DPC for such absorption of Accounts staff and promotion for the Audit staff to the cadre of SO (Audit)". We also do not find any circular or instructions of the CAG on record, stipulating that the seniority of A&E staff would be assigned on the basis of the year of passing of the SOGE. Hence, issue no. (ii) of para 7 is answered in negative, implying that in accordance with the guidelines of the CAG, the applicant will not be eligible for claiming seniority as in the OA.

19. The example of Sri Chandra Kumar Agarwala given by the applicant will not be helpful to the applicant as it is explained by the respondents that Sri Agarwala was allowed to be absorbed w.e.f 9.02.2005 against available vacancy. The applicant in the Rejoinder has stated that Sri Agarwala was not absorbed in pursuance to the demand letter circulated by the Audit office, which is being insisted for the applicant. It is seen from the Annexure R/8 that the seniority of Sri Agarwala has been fixed as per the instructions from the CAG office dated 7.11.2008, which seems to be at variance with the letter dated 3.10.2008. However, wrong fixation of seniority of one employee will not give a right for to be wrongly treated in a similar manner. This is in view of the ratio of the judgment of Hon'ble Apex Court in the case of **State of Bihar vs. Upendra Narayan Singh, [2009(5) SCC 65]**, in which it was held as under:-

"By now it is settled that the guarantee of equality before law enshrined in [Article 14](#) is a positive concept and it cannot be enforced by a citizen or court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing wrong order."

20. Hon'ble Apex Court in the case of **M/S. Faridabad Ct Scan Centre vs D.**

G. Health Services & Ors [(1997) 7 SCC 752] has held as under:-

"We fail to see how [Article 14](#) can be attracted in cases where wrong orders are issued in favour of others. Wrong orders cannot be perpetuated with the help of [Article 14](#) on the such wrong orders were earlier passed in favour of some other persons and, therefore, there will be discrimination against them. In fact, in the case of Union of India [Railway Board] & Ors. Vs. J. V. Subhaiah and Ors. (1996 (2) SCC 258), the same Learned judge in his judgement has observed in para 21 that the principle of equality enshrined under [Article 14](#) does not apply when the order relied upon is unsustainable in law and is illegal. Such an

order cannot form the basis for holding that other employees are discriminated against under [Article 14](#). The benefits of the exemption notification, in the present case, cannot, therefore, be extended to the petitioner on the ground that such benefit has been wrongly extended to others. With respect, the decision in Mediwell hospital (supra) does not lay down the correct law on this point."

Therefore, the benefit of a wrong order issued for another employee is not available for the applicant.

21. In the facts and circumstances as discussed above, we are not inclined to consider the reliefs as prayed for in these OAs both on the ground of delay as well as on merit. The OAs are, therefore, dismissed. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath