

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

Original Application No. 1145 of 2013

Reserved on: 11.03.2019

Pronounced on: 5.04 .2019

Between:

1. D. Nanaji, S/o. D. Satyanarayana (late), 38 years,
2. P.V.V.S. Subrahmanyam, S/o. PVVS Narayana Rao, 37 years,
3. Md. Abid Ali, S/o. Md. Hani, aged 38 years,
4. C. Binu, S/o. K. Chellappan Achery, aged 39 years,
5. Rajesh Kumar Kutuvan, S/o. Sankaran K (Late), aged 39 years,
6. Y.R.G. Sanyasi Naidu, S/o. Y. Ramana (late), aged 39 years,
7. D.V.S.K. Sarma, S/o. D. Satyanarayana Murthy, aged 41 years,
8. Y. Eswara Rao, S/o. Y. Janardhana Rao, aged 40 years,
9. J. Rama Rao, S/o. J. Ammanna (late), aged 39 years,
10. S. Govinda Rao, S/o. S. Venkata Rao (late), aged 40 years,
11. N. Venkata Rao, S/o. N. Pullaiah (late), aged 42 years,
12. Ch. Eswara Rao, S/o. Ch. Appa Rao, aged 37 years,
13. S. Sikdar, S/o. P.G. Sikdar (late), aged 43 years,
14. Sheik Rehman, S/o. Raja Saheb (late), aged 36 years,
15. V. China Raju, S/o. Bangara Raju, aged 37 years,
16. S. Syamala Rao, S/o. S. Butchi Raju, aged 36 years,
17. P. Arjuna Rao, S/o. Appa Rao (late), aged 38 years,
18. P. Chandra Sekhara Rao, S/o. P. Kasayya, aged 39 years,
19. D. Madhusudana Rao, S/o. Simhachalam, aged 37 years,
20. G. Srinivasa Rao, S/o. G. Appala Raju, aged 40 years,
21. B.V.Ramana, S/o. Chellayya (late), aged 38 years,
22. B. Ramana Rao, S/o. Parasayya, aged 40 years,
23. G. Siva Appa Rao, S/o. G. Polipilli (late), aged 39 years,
24. P. Padmavathi, W/o. P. Jogi Naidu, aged 37 years,
25. M. Baby Rani, W/o. P. Hari Kumar, aged 40 years,
26. M. Madhu Babu, S/o. Paridesinaidu, aged 38 years,
27. N.S. Satyanarayana, S/o. N. Ramamurthy, aged 40 years,
28. K. Surya Prakasa Rao, S/o. K. Demudu, aged 37 years,
29. S.L. Sabuji, S/o. K. Sadanandan, aged 39 years,
30. Abraham Vinod, S/o. K.V. Abraham, aged 40 years,
31. Angati Raju, S/o. A. Ramu (late), aged 39 years,
32. Nakka Chandra Sekhar, S/o. N. Narasimha Murthy (late), aged 38 years,
33. K.V.V.V.S.D. Kumar, S/o. Ramulu, aged 38 years,
34. N. Jyothi Lakshmi, D/o. N.V.G. Swamy, aged 33 years,
35. S. Jhansi Lakshmi, D/o. D. Nooks Raju Reddy, aged 38 years,
36. N. Naga Mani, D/o. N. Prabhakara Rao, aged 38 years,
37. N. Radha Jaya Lakshmi, D/o. N. Simhachalam, aged 40 years,
38. V. Meenakshmi Sundaram, D/o. V.G.K. Murthy, aged 37 years,
39. G. Neeraja Gupta, W/o. G.S.V.R. Gupta, aged 39 years,
40. R.V. Lakshmi, D/o. R. Nosati Kanti Rao, aged 39 years,
41. M. Trinadha Rao, S/o. Suryanarayana, aged 35 years,

42. B. Ratan Raju, S/o. David Raju (late), aged 41 years,
43. A. Chandra Sekhar, S/o. Satyanarayana (late), aged 40 years,
44. B. Aruna, D/o. B. Rama Rao, aged 39 years,
45. Abdul Gouse Thaj, S/o. Abdul Mazeed, aged 39 years,
46. R. Pothayya, S/o. Simhachalam, aged 35 years

(All the applicants are working as Construction Assistant 'C' in the Ship Building Centre, Visakhapatnam.)

... Applicants

And

1. Union of India, rep. by
The Secretary and Scientific
Advisor to Raksha Manthri,
Department of Defence Research & Development,
DRDO Head Quarters,
Rajaji Marg, New Delhi – 110 105.
2. The Director General, Headquarters,
Advanced Technical Vessels Programme (ATVP),
Akanksha Development Enclave,
Opp. Rao Tula Ram Marg, New Delhi – 110 010.
3. The Project Director,
Ship Building Centre,
Varuna Block, Godavari Gate,
Visakhapatnam – 530 014.

... Respondents

Counsel for the Applicants ... Mr. K.R.K.V. Prasad

Counsel for the Respondents ... Mr. M. Brahma Reddy, Sr. PC for CG

CORAM:

Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)

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

ORDER

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

2. The OA is filed for not granting promotion to the applicants as Construction Supervisor on par with their junior.
3. Applicants joined the respondents organisation as Tradesmen skilled and were appointed in the scale of Rs 950-1500 (4th CPC) instead of Rs.1200-1800 (4th CPC). Aggrieved over the same applicants working as construction assistant A approached this Tribunal for posting them in the grade of HSK II (Highly

skilled) /construction assistant B, which was allowed. Matter attained finality after the Hon'ble Supreme Court upheld the Tribunal decision. Respondents implemented the decision by placing the eligible employees in HSK grade/ Construction Asst B on 14.2.2006 in the pay scale of Rs 1200-1800 (4th CPC) w.e.f. 3.8.1999. Consequent to this order, applicants are entitled to be promoted as construction asst C in 2004 after completing residency period of 5 years in Construction Asst B cadre but they were given promotion as construction assistant C belatedly in 2008. While the litigation in regard to higher scale was pending, an employee by name Sri B.K. Padhi who was absorbed in HSK –II grade/construction asst B on 1.11.2003 was promoted as construction asst C in 2005 without completing the residency period of 5 years in feeder cadre of construction asst B. The said employee Sri S.K. Padhi is junior to the applicants as they have been absorbed in HSK-II/Construction asst B from the date of initial appointment covering the period 1995 to 1998 vide SRO 98/2002 of the respondents. Applicants were promoted as Construction Asst C (CA-C) in 2008 which in their view, is illegal in view of the junior having been promoted to the said cadre in 2005 itself. Respondents have also not issued the seniority list in CA- C cadre though there is a direction to do so in letter dt 14.2.2006 of the respondents. In the meanwhile, the junior Mr B.K. Padhi was promoted as Construction Supervisor (CS) on 25.1.2012. Applicants have represented that they should also be promoted as Construction Supervisor on par with the junior as there were vacancies available, by considering the delay in promoting the applicants to different levels from time to time by the respondents on account of pending litigation. The condition of residency period of 5 years in the grade of CA-C has to be ignored for the applicants since it was the mistake of the respondents in not placing them in the proper grade while initially absorbing

them. Respondents rejected the request made by the applicants vide representations dated 2.7.2013, 3.7.2013, 11.7.2013 and 3.8.2013 on the ground that they did not complete the residency period of 5 years when the DPC met in 2012. Applicants claim that the respondents are deliberately not considering their request for DPC 2012 albeit their junior was considered and promoted. Aggrieved over the same OA has been filed.

4. The broad contentions of the applicants are that the ATVP Technical Cadre was formed on 3.8.1999 and the RRs were issued on 5.2.2000. Therefore the question of Mr. Padhi being absorbed on 13.8.1994 does not arise. Besides, Hon'ble Supreme Court has observed in *Sushma Mutreja v U.O.I &ors* that a person joining a new cadre shall be junior to all those born on the said cadre as on the date of his joining in the new cadre. Respondents have not quoted the rule under which a junior can be promoted overlooking the claim of seniors. As per SRO 98/2002 and DOPT memo dt 25.3.1996 seniors should be considered for promotion while juniors are considered. Mr Padhi was initially absorbed in Naval Dockyard, Mumbai as labourer in 1977 and on compassionate grounds transferred to NDV in 1994 with a clause that his seniority will be counted from the date of his joining. There after he joined the ship building centre (SBC) in ATVP Technical cadre on 1.11.2003 vide order dt 12.11.2003 of the respondents wherein it was clearly shown that Mr Padhi is junior to the applicants. Mr Padhi has joined the respondents organisation as labourer at Mumbai and not at higher level than the applicants as claimed by the respondents. In view of the pending litigation of the applicants in regard to the grade at the time of initial absorption, Mr Padhi was shown as senior, but after the court verdict Mr Padhi has to rank junior to the applicants in CA-B grade. The order of the Tribunal was notional in regard to fixation of pay and not about seniority. As per orders contained in SRO

8/2000 regular service of the applicants shall be taken into consideration for promotion which commences from the date they have been absorbed as HSK-II/CA-B. Respondents have informed the applicants in replies dt 2.7.2013, 3.7.2013, 11.7.2013 and 3.8.2013 that their promotion could not be considered for promotion in DPC 2013 because they did not complete the residency period of 5 years in CA-C which is contradictory to their stand of not granting promotion for want of vacancies vide impugned orders issued in July and August 2013.

5. Respondents while confirming that the applicants have been notionally absorbed as HSK-II /Construction Asst. B from the date of their joining the respondents organisation, they deny that Mr B.K.Padhi was junior to the applicants. Mr Padhi joined the Naval Dockyard on 13.8.1994 and the applicants joined from 1995 to 1998 in Ship building centre. Further Mr Padhi was transferred from Naval Dockyard along with 268 others in the grade of Construction Asst B/HSK-II to Ship Building centre, Vizag as per lr dt 31.10.2003 of the respondents. Applicants were promoted as Construction Asst C (CA-C) in 2007 after completing the residency period of 5 years and qualifying in DQE (Department Qualifying Exam). Thus they will be eligible for promotion to the post of Construction Supervisor (CS) only in 2012. A DPC met in 2013 and none of the applicants were promoted as CS since there were limited vacancies available. Mr Padhi joined the higher grade earlier to the applicants and therefore he would be eligible for promotion earlier to the applicants. The contention of the applicants that seniority list was not released is false as it was published in 2007 and was duly acknowledged by the applicants. Claim of the applicants that they were due for promotion as CA-C in 2004 is imaginary as the court order in regard to promotion was issued on 4.4. 2005.

6. Heard both the counsel and perused documents, material papers and the additional replies along with corresponding rejoinders in detail.

7. I) Preliminary objection raised by the learned counsel for the respondents was that the OA is barred by limitation as Mr Padhi was promoted in Jan 2012 whereas the OA has been filed in Aug 2013. The objection raised does not sustain as seniority and promotion are a continuous cause of action. Hon'ble Principle Bench of this Tribunal has also observed in OA 1245/2010 that “ Seniority and Promotion are a continuous cause of action with future implications ”

Similarly learned counsel for the applicants has raised an objection that in the impugned orders issued in response to the emails/representations of the applicants in July and Aug of 2013, respondents have stated that applicants could not be considered for promotion as they did not complete the residency period of 5 years in the feeder cadre. Whereas in the reply statement respondents have raised a new ground asserting that applicants are junior to Mr Padhi and hence are ineligible for promotion. Respondents are expected to confine themselves to grounds stated in the impugned order and are forbidden to improve their reply by bringing in material extraneous to what is contained in the impugned orders. Hon'ble Apex Court observations in Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner & Ors. AIR 1978 SC 851 are relevant and pertinent to the case on hand. Having dealt with the preliminary objections raised on either side, we now turn our attention to the core issue of junior being promoted ignoring the seniors.

II) The case is firmly anchored around the issue of whether Sri Padhi is junior or senior to the applicants. Once this issue is examined and decided we

can see light at the end of the tunnel. The facts which require a close look are as follows:

- i) What are the contents of the Presidential order dt 14.2.2006 in regard to the initial absorption of the applicants?

Presidential order issued by the respondents on 14.2.2006 reads as under:

“Sanction of the President is also conveyed to their initial absorption in the ATVP Technical cadre w.e.f 3rd August 1999 as construction Assistant (CA-B) in the revised pay scale of Rs 4000-6000. (pre-revised scale being 1200-1800) ”

Therefore it is an undeniable fact that the applicants have been absorbed in ATVP cadre as Construction Asst -B in 1999 due to the judgment rendered by this Tribunal and which were upheld by the Hon’ble High Court of A.P. The issue was also tested in the Hon’ble Supreme Court by the respondents with lady luck not smiling on them. Hence the matter has attained finality. This is an undisputed fact.

- ii) Related to the aspect of appointment on absorption, what do the recruitment rules of respondents in regard to ATVP Technical cadre state?

ATVP technical cadre was established on 3.8.1999 and the relevant Recruitment Rules (RR) were issued on 5.2.2000. The said recruitment rules provide for appointment through absorption. Accordingly applicants were absorbed in 1999 as per the Presidential order date 14.2.2006.

- iii) In contrast Mr Padhi , when was he absorbed in SBC and if so under which rules ?

Mr Padhi joined Naval Dockyard Vizag from Naval Dockyard, Mumbai in 1994 on compassionate grounds. At that instant of time, Admiral Superintendent who was administering staff matters was empowered as per Presidential manpower sanction orders issued from 1989 to 1997 in regard to ATV programme of North Yard complex (presently known as Ship Building centre (SBC)), to recruit personnel through Direct recruitment or induction of Apprentices through Naval Dockyard Apprentice School, Vizag. There was no provision to appoint personnel on absorption basis. Therefore, the transfer order dt 13.8.1994 issued by the respondents clearly states that Mr Padhi was posted to Naval Dockyard on transfer and that his seniority will count from the date he joins Vizag Naval Dockyard. Thereafter he was absorbed in Ship Building centre, Vizag w.e.f 1.11.2003 as per respondents letter dt 31.10.2003. It is not out of place to state that the respondents have claimed in their letter PIR/0137/SBC/REP dt 13.2.1999, while responding to a representation of an employee Mr CH Muthyalu, that comparison cannot be drawn between personnel of North Yard complex (now known as SBC) and Naval Dockyard personnel. The same conclusion was also arrived at para 22 by this Tribunal involving the same respondents and some other applicants in OA 1215 of 2012. In other words SBC and Naval Dockyard are two independent units and maintain independent seniority with respect to their unit. Therefore when Mr Padhi was shifted to the Ship Building centre from Naval Dockyard Vizag (NDV) on 1.11.2003, he is to be absorbed in equivalent grade at the bottom of the list existing as on that date ie 1.11.2003. The logical reason underlying this observation is that NDV & SBC are independent units. To top it, when the recruitment rules were framed in 2000 in accordance with respondents letter dt 3.8.1989 conveying sanction of the

Hon'ble President, it would be seemingly impracticable for Mr Padhi to be absorbed prior to 2000 as claimed by the respondents.

Interestingly, respondents themselves have admitted this fact in the reply statement filed by them in O.A 702 of 2016 before this Tribunal at para 8 as under :

“ He (Mr Padhi) was absorbed under ATVP technical cadre (MSTS) (NI) and was taken on strength of SBC (Vizag) w.e.f 01 Nov 2003 in the grade/Trade of HSK –II (later redignated as Construction Assistant B (fitter) at SBC (Vizag).”

Further, it should not be lost sight of that as per orders contained in SRO 8/2000 issued by the respondents, regular service of the applicants shall have to be taken into consideration for promotion and the regular service of the applicants commences from the date they have been absorbed as HSK-II/CA-B. Once this norm is followed applicants stand senior to Mr Padhi even on this ground.

Thus the respondents having affirmed before this Tribunal that Mr Padhi was absorbed only in 2003 in OA 702/2106 and contradicting themselves in the instant OA by stating that Mr Padhi was absorbed in 1994 is rather surprising to say the least. May be, the historical facts of the case have not been given a close reading by the respondents. Besides, respondents being a model employer as per Supreme Court observation in 2013 (2) SCC 516, they need to be cautious in submitting reply statements which necessarily have to be consistent and should not be akin to the shifting dunes of silver sand in Thar desert as the day progresses. There can thus be no scope to consider Mr Padhi as senior to applicants who were absorbed in SBC in 1999. Hence the applicants are senior to Mr Padhi.

iv) Having established that the applicants are senior to Mr Padhi what does law state in regard to seniority and the attendant benefits of being senior?

Hon'ble Supreme Court has held in

a) *Bal Kishan v. Delhi Admn.*, 1989 Supp (2) SCC 351 the Apex Court as under:-

9. In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralising effect in service apart from being contrary to Article 16(1) of the Constitution.

b) *Ashok Kumar Shrivastava v. Ram Lal*, (2008) 3 SCC 148 :

90. We are aware that it is a well-established principle of law that till such time as an employee is borne on the cadre he cannot have any claim to seniority over others who are already in the cadre.

c) A claim of seniority could only be from the date one is borne in service.

(See *Vijaya Kumar Shrotriya v. State of U.P.*, (1998) 3 SCC 397)

d) *Amarjeet Singh v. Devi Ratan*, (2010) 1 SCC 417,

27..... An officer cannot be granted seniority prior to his birth in the cadre adversely affecting the seniority of other officers who had been appointed prior to him. "The latecomers to the regular stream cannot steal a march over the early arrivals in the regular queue." [Vide S.P. Kapoor (Dr.) v. State of H.P. (1981) 4 SCC 716 Shitla Prasad Shukla v. State of U.P. (1986) Supp 185 SCC p. 190, para 10) and Uttarakhand Forest Rangers' Assn. (Direct Recruit) v. State of U.P. (2006) 10 SCC 346]

..... The appellants who had been promoted with an earlier date, thus, are bound to be senior than the respondents who had

been promoted with respect from a later date. No employee can claim seniority prior to the date of his birth in the cadre.

e. Applicants have also cited the Hon'ble Supreme court observation in Sushma Mutreja v U.O.I reported in CA 4995-4996 wherein it was held as under:

“ That apart , on first principle also when a person is brought from one cadre to other and joins a new cadre then he must be treated to be the lowest in the cadre on that date, but he cannot be junior to all those who were not even born in the cadre on that date. ”

f. One another judgment of the Hon'ble Supreme Court cited by the applicants is that of R.K.Sethi's case (1997) 10 SCC 616 where in it was held that :

“ Once it is held that Telex Operators have been rightly placed enbloc below regular employees in AG-II cadre as a result of the merger of the said cadre in the cadre of AG-II as on April 25, 1980 regular employees in AG –II cadre who were senior to the Telex operators could rightly feel aggrieved if they are denied promotion while their juniors were promoted as AG-I. The next below rule in service jurisprudence seeks to ensure that if a junior employee is given promotion without considering his senior then the senior employee can claim the right to be considered for such promotion with effect from the date on which the junior was so promoted”

g) To further strengthen their case applicants quoted the Hon'ble Supreme Court judgment in U.O.I and anr v Onkar Chand and ors reported in 1998 (9) SCC 298 as under:

“ He shall be ranked below all direct recruits or promotees, as the case may be selected on the same occasion. Therefore, when the said Onkar Chand was permanently absorbed (by transfer) in the cadre of JIO –I w.e.f 31.12.77 he must take his seniority below the persons in the department already in the cadre of JIO-I on that date.”

As seen from the facts of the case Mr Padhi was born in the cadre of construction Assistant B in 2003 at SBC after the applicants who were borne in the cadre in 1999. By applying the legal principles enunciated by the Hon'ble Apex Court cited supra, applicants rank senior to the applicant. Hence law in no uncertain terms is in favour of the applicants. Consequently applicants are entitled for the promotion as construction supervisor when their junior was considered.

v) Next question that calls for an answer is that Mr Padhi was promoted as Construction supervisor after passing the departmental exam and clearing the DPC in 2012 whereas the result of applicants clearing the departmental qualifying exam of 2011 was announced in March 2012, subsequent to the promotion of Mr Padhi. Therefore can the applicants be considered for promotion on par with Mr Padhi?

The chequered history of the applicants case makes it evident that they had to fight a long drawn legal battle to acquire the right of being absorbed in the higher cadre of CA-B instead of CA –A at the beginning of their career in the construction assistant grade. In the meanwhile Mr Padhi was getting promotions in the normal course. However, after the applicants won the legal battle they were absorbed in the cadre of construction Asst B in 1999 thereby making them senior to Mr Padhi as explained in above paras. Even the relevant orders of the respondents were broached upon to arrive at the conclusion that applicants are senior to Mr Padhi. However, the aspect of Mr Padhi being shown as senior was as a result of improper appreciation of the rules and law on the subject by the respondents. Respondents unwillingness

to accept the truth of the applicants being senior to Mr Padhi has led to the protraction of the dispute and the applicants approaching this Tribunal to render justice. After the seniority issue being settled based on rules and law, the question that would arise is as to whether applicants can be penalised for the mistake of the respondents. This question has been answered by the Hon'ble Supreme Court in the following judgments:

(1) The Apex Court in a recent case decided on 14.12.2007 (Union of India vs. Sadhana Khanna, C.A. No. 8208/01) held that the mistake of the department cannot recoil on employees. In yet another recent case of M.V. Thimmaiah vs. UPSC, C.A. No. 5883-5991 of 2007 decided on 13.12.2007, it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer.

(2) It has been held in the case of Nirmal Chandra Bhattacharjee v. Union of India, 1991 Supp (2) SCC 363 wherein the Apex Court has held “The mistake or delay on the part of the department should not be permitted to recoil on the appellants.”

(3) Further the Hon'ble Supreme court has observed in State of Maharashtra v Jagannath Achyut Karandikar as under:

“The person who has not exhausted the available chances to appear in the examination cannot be denied of his seniority. It would be unjust, unreasonable and arbitrary to penalise a person for the default of the Govt. to hold the examination every year. That does not also appear to be the intent or purpose of the 1962 rules.”

(4) Applicants have cited the judgment of Hon'ble Ernakulam bench of this Tribunal in OAs 723 /12.753/12, 781/12 where in the unintended delay on part

of the respondents in conducting an exam should not make the applicants therein to suffer.

(5) Respondents per contra, cited Hon'ble High Court of A.P verdict in WP no 27323 of 2011, wherein it was held that unless applicants pass DQE they cannot be considered for promotion. Therefore since the applicants could not appear along with Mr Padhi in DQE they cannot claim promotion on the date he was promoted. This proviso has been satisfied by the applicants on clearing the 2011 DQE. However, after passing 2011 DQE applicants were considered by DPC in 2013 but could not be promoted in view of non availability of vacancies. Applicants contest this submission of the respondents by stating that there were number of vacancies available in 2012 in the year in which Mr Padhi was promoted as Construction Supervisor. Nevertheless, neither party produced credible documentary evidence as to the vacancy position in the grade of construction supervisor in 2012 and thereon.

To conclude, a quick glimpse of the entire case would reveal that it was the mistake of the respondents in showing the applicants as junior to Mr Padhi. Only with the intervention of the judicial fora they could get an order on 14.2.2006 restoring their legal right of being considered as CA-B w.e.f 1999. In the intermittent period applicants were disqualified to appear in the exam in which Mr Padhi appeared and got qualified as construction supervisor, on grounds of not fulfilling the condition of required residency period. However, applicants passed DQE of 2011 for construction supervisor. Therefore the question that arises is why not consider the request of the applicants to be promoted on par with his junior Mr Padhi, since the applicants have qualified in the DQE like Mr Padhi. It was only a difference in the year of exam but the main condition of

passing the DQE has been fulfilled. The applicants being unable to appear in the DQE along with Mr Padhi was the mistake of the respondents. Hence this mistake of the respondents should not recoil on to the applicants. It is necessary that the respondents correct this mistake as per DOPT OM dated 25.3.1996 wherein it was stated that a senior has to be promoted if a junior is promoted on completing required residency period, provided the senior completes half of the residency period prescribed or 2 years of residency period in the feeder cadre. In fact respondents issued SRO 98/2002 enwebbing the content contained in DOPT memo dt 25.3.1996. Therefore this rule of the respondents has to be respected. Applicants satisfy the DOPT office memo dt 25.3.1996/SRO 98 of 2002 and hence are eligible for promotion on par with their junior Mr Padhi as well as per the judgments of the Hon'ble Supreme Court cited supra. If the respondents were to follow their own rules and law the piquant situation in which the applicants are placed would not have arisen. It is not an aspect of imagination to seek lawful promotion as adduced by the respondents, instead it is an aspect of respecting articles 14 and 16 of the constitution. Respondents should not infringe their own rules. Hon'ble Supreme has often observed that violation of rules should not be encouraged. The observation of the Hon'ble Supreme Court in this regard are as under:

The Hon'ble Supreme Court observation in **T.Kannan and ors vs S.K. Nayyar (1991) 1 SCC 544** held that "*Action in respect of matters covered by rules should be regulated by rules*". Again in **Seighal's case (1992) (1) supp 1 SCC 304** the Hon'ble Supreme Court has stated that "*Wanton or deliberate deviation in implementation of rules should be curbed and snubbed.*" In another judgment

reported in (2007) 7 SCJ 353 the Hon'ble Apex court held “ *the court cannot de hors rules*”

- vi) While framing the seniority of the applicants, has it to be drawn up as per trade or grade seniority?

Respondents claim that the applicants did not challenge the seniority list drawn up by the respondents. Applicants claim that they did question the seniority list. More than this controversy if one were to peruse the seniority lists submitted by the respondents as on 11.5.2009, they have been framed as per the trade of the applicants. The axiom to be followed when there are multiple trades in an organisation, is to follow grade wise seniority, which the respondents failed to follow. This Tribunal has declared the principle of grade wise seniority involving the same respondents in OA 567 of 2013 and batch on 6.12.2018. Hence the seniority list prepared by the respondents is itself incorrect. Therefore the claim of the respondents they have followed the correct seniority is illogical in view of the fact they have framed a seniority list which is against the direction of this tribunal in OA 567/2013 & batch vide order dt. 06.12.2018.

Thus based on the answers that emerged to the issues raised in the instant OA, it requires no reiteration that the applicants are senior to Mr Padhi. Law favours applicants stand unequivocally. Thus the action of the respondents to deny promotion to the applicants on par with their junior Mr Padhi is against rules, arbitrary and illegal. Hence the OA fully succeeds. The respondents are therefore directed to consider as under:

- i) To promote the applicants as construction supervisors w.e.f 20.1.2012, the date from which their junior Sri Padhi was promoted as construction supervisor on a notional basis.
- ii) Respondents to promote the applicants w.e.f. 20.1.2012 on notional basis against vacancies available and in case vacancies are not available, promotions be ordered as and when vacancies arise. Applicants shall not be paid any back wages but their pay will be fixed on the date of joining the post of Construction Supervisor by effecting the promotion on a notional basis as on 20.1.2012.
- iii) Time calendared to implement the order is 3 months from the date of receipt of this order.
- iv) With the above directions the OA is allowed.
- v) No order as to costs.

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

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated, the 5th day of April, 2019

evr