

CENTRAL ADMINISTRATIVE TRIBUNAL,

CHANDIGARH BENCH

O.A.NO.060/00412/2019 Orders pronounced on: 24.12.2019
(Orders reserved on: 02.12.2019)

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MR. A.K. BISHNOI, MEMBER (A)**

Dr. Arun K. Jain, aged 60, S/o Sh. K.C. Jain, R/o H. No. 195, Sector 12-A, Panchkula Haryana currently working as Professor in Eye Department and Head of Unit III in Advanced Eye Centre, Post Graduate institute of Medical Education & Research, Chandigarh Pin: 160014 (Group-A).

Applicant

**(BY: MR. D.S. PATWALIA, SR. ADVOCATE, WITH
MR. A.S. CHADHA, ADVOCATE)**

Versus

1. Union of India through the Secretary, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi, 348 "A" Wing, Nirman Bhavan, New Delhi-110011.

(BY : MR. SANJAY GOYAL, SR. CGSC)

2. Post Graduate Institute of Medical Education and Research, Sector-12, Chandigarh-160014, through its Director
3. Senior Administrative Officer, Post Graduate Institute of Medical Education and Research, Sector-12, Chandigarh-160014.

**(BY MR. AMIT JHANJI, ADVOCATE WITH
MR. A.K. PREMI, ADVOCATE)**

4. Dr. Surinder Singh Pandav, Professor, Post Graduate Institute of Medical Education and Research, Sector-12, Chandigarh-160014

**(BY: MR. RAJIV ATMA RAM, SR. ADVOCATE WITH
MR. D.R. SHARMA, ADVOCATE)**

...

Respondents



O R D E R
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The solitary and a very important question of law, involved in this Original Application (O.A) is, as to whether a tentative/provisional seniority list, which has remained in operation for over two decades, and stands acted upon by making promotions on that basis, can be called as tentative/provisional for all times to come, and can it be tinkered with, after huge delay of over two decades, merely because its nomenclature remains 'tentative/provisional'.

2. The applicant has filed this O.A under section 19 of the Administrative Tribunals Act, 1985, seeking quashing of impugned order dated 12.4.2019 (Annexure A-15), vide which his seniority, over and above respondent no.4 (Dr. Surinder Singh Pandav, Professor, Post Graduate Institute of Medical Education & Research ("PGIMER" for short), has been rejected and for issuance of a direction to the respondent no.2 (Director, PGIMER, Sector 12, Chandigarh) to correct the error made in the seniority list dated 25.9.2018 (Annexure A-12) and that the official respondents be further



restrained from giving any benefit, arising out of the seniority list dated 25.9.2018 (Annexure A-12) to Respondent No.4.

3. The facts of the case are largely not in dispute. The relevant facts which lead to filing of the present lis are that the applicant is a Professor (Ophthalmology) and Unit III Head in Advance Eye Centre of PGIMER, Chandigarh. On 11.2.1995 (Annexure A-1), he was appointed as Assistant Professor (Ophthalmology) in respondent PGIMER, along with Dr. Surinder Singh Pandav (Respondent No.4). In the select list, the name of Respondent No.4 is mentioned at Sr. No.1 and that of Applicant at Sr. No.2. The applicant and Respondent No.4, were promoted under Assessment Promotion Scheme (APS), as Associate Professor w.e.f. 1.7.1999, vide order dated 17.11.2000 (Annexure A-2). In this order, name of Applicant is at Sr. No. 6, whereas that of Respondent No.4 is at Sr. No.10.

4. Respondent No.2 (PGIMER) issued a provisional seniority list of Professors/Additional Professors/Associate Professors/ Assistant Professors on 30.11.2001 (Annexure A-3) in which the name of applicant was at Sr. No.42 whereas Respondent No.4 was shown at Sr. No. 46. The applicant was promoted as Additional Professor w.e.f. 1.7.2003 vide order



dated 21.12.2005 (Annexure A-4). In the Seniority List of Additional Professors as on 31.3.2006 issued on 17.8.2006 (Annexure A-5), applicant was placed at Sr. no. 37 whereas Respondent No.4 was shown at Sr. No. 39. In the Seniority List dated 31.3.2007 (Annexure A-6) of Additional Professors, applicant was shown at Sr. No. 35 and Respondent No.4 at Sr. No. 37. The applicant was promoted as Professor w.e.f. 1.7.2008 vide order dated 23.4.2011 (Annexure A-7). Another provisional seniority list of Professors as on 14.8.2015 (Annexure A-8) was issued in which applicant was at Sr. No. 69, whereas Respondent No.4 was shown at Sr. No. 70. The PGIMER, Chandigarh, issued Seniority List of Professors as on 14.8.2015 vide letter dated 11.9.2015 (Annexure A-8) in which applicant was placed at Sr. no. 69 and Respondent No. 4 at Sr. No. 70. Similarly, in Seniority List dated 31.1.2018 (Annexure A-9), applicant's name is at Sr. No. 43, whereas that of Respondent no.4 is at Sr. No. 44.

5. The applicant further submits that Respondent No.4 submitted a representation dated 25.11.2017 to respondent no.2, that even though he was senior to applicant prior to 2004, but his seniority was tinkered with in 2006, when he returned from study leave, and as such he be



restored his original seniority. Finding no response, he submitted another representation / reminder dated 28.3.2018.

6. An O.A. No. 060/00336/2017 titled **PROFESSOR ARUNANSHU BEHERA VS. UNION OF INDIA & OTHERS,** was filed in this Tribunal challenging order dated 4.1.2017 whereby representation of applicant (therein) for seniority over and above Dr. Gurpreet Singh and Dr. G.R. Verma, of Department of General Surgery, (Respondents No.3&4 therein), was rejected. The issue was qua inter-se seniority of two categories appointed by way of direct recruitment and under APS Scheme. The question was, if one undergoes direct recruitment and fails but promoted under APS Scheme, can he be kept senior over and above direct recruits. In that context, it was held that the merit determined by the Selection Committee, of the applicant (direct recruitee therein) could not be disturbed, in fixing his seniority viz-a-viz those who were promoted under APS Scheme. Thus, direction was issued to prepare seniority list accordingly, vide order dated 28.3.2018 (Annexure A-11).

7. In purported compliance of aforesaid decision, the respondent PGIMER issued gradation/seniority list of



Professors as on 31.7.2018, vide letter dated 25.9.2018 (Annexure A-12), in which the applicant was placed at Sr. No. 37 whereas respondent no.4 was kept at Sr. No. 36. Meanwhile, another development took place that order dated 28.3.2018 (Annexure A-11) of this Tribunal was challenged in C.W.P.No.11433 of 2018 – **DR. GURPREET SINGH VS. PROF. ARUNANSHU BEHERA & OTHERS** and C.W.P.No.10203 of 2018 – **PGIMER & ANOTHER VS. PROF. ARUNANSHU BEHERA & OTHERS**, which were allowed vide order dated 23.1.2019 (Annexure A-13), holding that Tribunal was not justified in entertaining the petition and the same was liable to be dismissed on the ground of limitation, delay and laches. The O.A. was also barred by estoppel. Upon this, the applicant submitted a representation dated 16.10.2018 (Annexure A-14), for restoring earlier seniority over respondent no.4. Finding no response, he filed O.A. No. 060/00058/2019 in this Tribunal. During its pendency, the respondents decided claim of applicant and rejected it vide order dated 12.4.2019 (Annexure A-15), hence the O.A.

8. Respondents No.2 and 3 have filed a joint reply. They submit that in the year 1994, 2 posts of Assistant Professors (Ophthalmology) were advertised in which



applicant and respondent no.4 appeared and were selected and in merit, Respondent No.4 was above the applicant. Both of them joined the PGIMER on 11.2.1995. The applicant was, however, placed above respondent no.4 as he was older in age. On 23.11.2017, respondent no.4 submitted representation which was examined and his claim was accepted and as such they pray that applicant is not entitled to any relief. The Respondent no.4 has filed his separate reply and supported the impugned order. He further submitted that justice has been done by the official respondents, while accepting his representation for correction of seniority list. The applicant has filed rejoinder to rebut the submissions made by respondents.

9. We have heard the learned counsel for parties and gone through the material available on file, with their able assistance.

10. The learned Senior counsel for the applicant vehemently argued that for over two decades, the applicant has been shown as senior to Respondent No. 4, in the seniority lists issued in the years 2001 (Associate Professors), 2006 (Additional Professors), 2007 (Additional Professors) and 2015 (Professors), and even in the seniority list dated



31.01.2018 (Annexure A-9), he has been shown at Sr. No. 43 whereas Respondent No. 4 is at Sr. No. 44. Respondent No. 4, for the first time, after about 23 years of service, has submitted representations dated 25.11.2017 and 28.03.2018 (Annexure A-10) which could not be accepted by the respondent PGIMER, after such a huge delay. He argues that possibly, taking advantage of the order passed by a Coordinate Bench of this Court in O.A. No. 00336/2017 titled **PROFESSOR ARUNANSHU BEHRA VS. UNION OF INDIA & OTHERS** wherein the official respondents were directed to re-cast the seniority list, the respondent no.4 submitted belated representations. The PGIMER, accepted belated representations of Respondent No. 4, ignoring the rules and law, and has tinkered with the well settled seniority for all these long years, and as such impugned order dated 12.04.2019 is nonest in the eyes of law. It is argued that settled things cannot be unsettled. Not only that, the view taken in the case of Professor Arunanshu Behra (supra), has been set aside by the Hon'ble High Court vide order dated 23.01.2019 (Annexure A-13), therefore, the seniority list is not sustainable in the eyes of law and, as such the seniority list dated 25.09.2018 (Annexure A-12) and order dated



12.04.2019 (Annexure A-15), rejecting the representation filed by the applicant be quashed and set aside being contrary to observations made by the Hon'ble High Court. To buttress his pleas, learned Senior Counsel has placed reliance on the following decisions:-

(I) PRAFULLA KUMAR SWAIN V. PRAKASH CHANDRA MISHRA, 1993 (1) CLR 436 : 1993 (1) SLR 565.

(II) C.W.P.NO.13186 OF 2019 (O&M) TITLED DR. ARUN K. JAIN VS. UNION OF INDIA & OTHERS, DECIDED ON 15.7.2019.

(III) DR. D.N. BHARDWAJ VS. STATE OF PUNJAB, (P&H), 1993 (2) SCT 171.

(IV) B.S. BAJWA & OTHERS VS. STATE OF PUNJAB, AIR 1999 SC 1510.

(V) MALCOM LAWRENCE CECIL D'SOUZA VS. UNION OF INDIA & OTHERS, AIR 1975 SC 1269,

11. On the contrary, learned Senior Counsel for respondents No.2 & submitted that since there was an error, so the authorities were well within their power and authority to correct such error and take remedial measures so as to



justice is done with the respondent no.4. They support the impugned orders. They submit that there is no limitation for the authorities to take corrective measures. The delay may bar a remedy through a court of law but there is no estoppel against the authorities for entertaining a belated claim more so when no final seniority list was ever issued and the indicated seniority lists remained as provisional/tentative only. Learned counsel for Respondent No.4 also toed the same line of argument. To buttress their pleas, learned counsels placed reliance on the following decisions:-

(I) MADRAS PORT TRUST V. HYMANSHU INTERNATIONAL, 1979 AIR (SC) 1144.

(II) MRS. ASHA RANI LAMBA VS. STATE OF HARYANA, 1983 (1) SLR 400.

(III) DR. VEER SINGH V. THE PANJAB UNIVERSITY, CANDIGARH, (P&H), 1996 (3) SCT 588.

(IV) SHRI CHANDER PARKASH SHARMA VS. THE STATE OF PUNJAB AND OTHERS, 1974 SLWR PAGE 80.

(V) RAJ KUMAR BATRA V. STATE OF HARYANA, (P&H), 1992 (1) SCT 129.



12. We have considered the submissions made by both sides minutely.

13. The arguments on both sides hovered around the word "tentative" or "provisional" used in the seniority lists issued from time to time. In the given facts of this case, it is apparent that every time the seniority/gradation lists were issued by the authorities, be it in 2001, 2006, 2007, 2015 or 2018 etc., the covering letters contained specific provision as under :-

"Provisional gradation-cum-seniority lists of Professors, Additional Professors, Associate Professors and Assistant Professors working at this institute as on ...

It is requested that the same may please be circulated amongst all the faculty members working in your department and their signatures obtained, in token of their having noted the contents of the gradation-cum-seniority list. The officer concerned may please be requested to check entries made against their names and if there is any error or discrepancy in the list, the same may please be intimated to this office for necessary action within a period of 30 days of issue of this memo, **failing which it will be presumed that the entries made in the gradation-cum-seniority list circulated are in order**". (emphasis ours)

It goes without any dispute, that the aforesaid extracted caveat contained in all the seniority lists issued from time to time starting from 2001. The language of the covering letters does not leave any manner of doubt, that the seniority lists



were to be provisional only for a period of 30 days during which one could submit his/her representation and if it is not done, then the entries were treated to be in order and as such the lists would assume the nature and character of a final seniority list. This is more so apparent from the fact that the seniority lists issued from time to time were acted upon for making further promotions as Associate Professors vide orders dated 17.11.2000 (Annexure A-2); Additional Professors, vide order dated 21.12.2005 (Annexure A-4) and as Professor vide order dated 23.4.2011 (Annexure A-7).

14. On a specific query put to the parties, they are ad idem that neither any objections were filed against the indicated seniority lists by applicant or respondent no.4 nor any such objections are pending consideration before the authorities and as such, the seniority lists have to be taken as finalized. Thus, to claim that the seniority lists have remained as provisional or tentative only for all these years, is nothing but a plea which is bereft of any logic or reason and contrary to the principles of interpretation.

15. In the case of **PRATAP SINGH VS. STATE OF JHARKHAND** (2005) 3 SCC 551, it has been held that interpretation of a statute depends upon the text and context



thereof and object with which the same was made. It must be construed having regard to its scheme and the ordinary state of affairs and consequences flowing there from. It must be construed in such a manner so as to be effective and operative on the principle of "ut res magis valeat quam pereat". When there is too much meaning of a word and one making the statute absolutely vague, and meaningless and other leading to certainty and a meaningful interpretation are given, in such an event the later should be followed. Sequally, in **BHARAT PETROLEUM CORPN.LTD. VS. MADDULA RATNAVALI** (2007) 6 SCC 81, it has been observed that Court should construe a statute justly. An unjust law is no law at all. Maxim "Lex in justa non est." Not only that, in **DEEVAN SINGH VS. RAJENDRA PD. ARDEVI** (2007) 10 SCC 528, it has been held that while interpreting a statute the entire statute must be first read as a whole then section by section , clause by clause , phrase by phrase and word by word .the relevant provision of statute must thus read harmoniously. In **JAPANI SAHOO VS. CHANDRA SHEKHAR MOHANTY** (2007) 7 SCC 394, it has been held that a court would so interpret a provision as would help sustaining the validity of law by applying the doctrine of reasonable construction rather than



making it vulnerable and unconditional by adopting rule of literal legis. Thus, the seniority list, as a whole has to be taken into consideration, on the attending circumstances of this case, to interpret as to whether it is final or tentative / provisional and the note given in all the covering letters indicates that the lists remain tentative for a particular period only and if there is no error pointed out to the authorities, then same is taken as final. No doubt, ideally the final seniority list should have been issued by PGIMER every year, but as is apparent from the admitted facts of this case that there is no procedure or system adopted by them for issuance of a final seniority list, after given time of 30 days for filing objections is over, and they treat provisional seniority list itself as a final list, if no objection is filed against the same within indicated time. In that view of admitted position, we have no hesitation in holding that the plea taken by respondents that the seniority lists, issued from time to time carry with it nature and character of "provisional" or "tentative" only is too farfetched and has to be rejected in toto. The reliance placed by learned counsel for the respondents on **ANIL VISHWASH V. HARYANA STATE ELECTRICITY BOARD**, 1992 (3) SCT 367, in which it was



held that a tentative seniority list can always be tinkered with, is misconceived. Obviously, as discussed above, the nature and character of seniority lists was not tentative/provisional in this case and as such this decision would be of no help to the respondents.

16. The plea taken by the learned counsel for the respondents that there was an error which took place at the time of appointment as despite respondent no.4 being more meritorious than applicant at the time of initial recruitment, yet he was placed below due to younger in age, and as such they were within their power and authority to correct an error, in view of law laid down in the case of **SUNDER LAL V. STATE OF PUNJAB**, 1970 (1) ILR (Punjab), is without any merit, as settled things cannot be unsettled after a long delay, more so when such delay has created right in favour of a third party. In that case, the bonafide mistake had taken place which was sought to be corrected and court upheld the action of authorities. That decision is based on different set of facts and law and has no application to the facts of this case. This issue is no longer res-integra and stands settled in a number of cases.



17. In the case of **STATE OF MADHYA PRADESH & ANR. V. BHAILAL BHAI ETC.** etc., AIR 1964 SC 1006, 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." (Emphasis supplied)

18. The Constitution Bench of Hon'ble Apex Court in **R.N. BOSE V. UNION OF INDIA & ORS.** AIR 1970 SC 470, has held that "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." In the case of **MALCOM LAWRENCE CECIL D'SOUZA VS. UNION OF INDIA AND ORS.** (1976) 1 SCC 599, it was held that if anyone feels aggrieved by an administrative decision affecting one's seniority, the said government employee should act with due diligence and promptitude and not sleep over the matter. Raking up old settled claims after a long time in questioning seniority etc. is likely to cause administrative complications and difficulties. This would be contrary to the interest of smoothness and efficiency of service. The quietus should not be disturbed and shattered after a lapse of time. Similarly, in **R.S. MAKASHI V. I.M. MENON & ORS.** AIR 1982 SC 101, the Apex Court considered all aspects of limitation, delay and laches in filing the writ petition in respect of inter se seniority of the employees. In **DAYARAM ASANAND V. STATE OF MAHARASHTRA & ORS.** AIR 1984 SC 850, while re-iterating the similar view the 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.



19. The issue of challenging the seniority list, after delay, was again considered in the case of **K.R. MUDGAL & ORS. V. R.P. SINGH & ORS.** AIR 1986 SC 2086 and it was held as under :-

"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..... 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 anyone 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."

In the case of **B.S. BAJWA V. STATE OF PUNJAB & ORS.** AIR 1999 SC 1510, the Court has clearly held that in service matters, the question of seniority should not be re-opened after the lapse of reasonable period because that results in disturbing the settled position which is not justifiable. In that case, there was inordinate delay for making a grievance and that alone was sufficient to decline interference under Article 226 and to reject the writ petition.

20. It is thus apparent that the principle of sit-back theory has been followed by courts of law to ensure that the



settled things are not unsettled after delay and if a right has accrued in favour of a party, then he has a reasonable belief that the same would not be taken back from him as in this case the first seniority list was issued in 2001 and upto 2018 (Annexure A-9), the applicant was shown as senior to respondent no.4. He has been shown as senior to respondent no.4 on each post starting from the post of Assistant Professor to the post of Professor for a long period of more than two decades and as such settled things cannot be unsettled by the official respondents even if there be an administrative error, as explained by them. More so, when respondent no.4 himself sit back and chose not to challenge the seniority lists issued from time to time and never filed a case in a court of law seeking the benefit. In seniority list as on 31.1.2018 (Annexure A-9), it is clearly stated that objections/ representations received from the Professors till date have been examined and became null and void. In reminder dated 28.3.2018, respondent no. 4 claimed that his seniority be restored with reference to his initial selection. It appears that upon the decision of this Tribunal in the case of Prof. Arunanshu Behera (supra), delivered on 28.3.2018, Respondent No.4 laid his claim for restoration of seniority, on



same date. No doubt, in that case the objection of limitation taken by respondents was brushed aside by the Tribunal and direction was issued to re-cast the seniority list, but in judicial review (CWPs), the Hon'ble High Court upset the view of this Tribunal and settled the issue holding that the Tribunal could not have entertained the petition being barred by limitation, delay and laches. The observations made by Hon'ble High Court in **CWP No.11433 of 2018 and 10203 of 2018** are as under :-

"Apart from justifying their action of granting retrospective seniority to respondents No. 3 and 4 on merits, the petitioner and respondents No. 3 and 4 sought the dismissal of the Original Application on the ground that it was barred by limitation and delay and laches. It was also pleaded that respondent No. 1 was estopped from claiming the relief sought.

The learned Tribunal rejected the objection to the maintainability of the OA on the ground of delay and laches by holding that the PGI had only circulated the provisional seniority list vide letter dated 17.8.2006 inviting objections from the aggrieved persons. The final seniority list had not been prepared. It was further held that the representation of respondent No.1 raising important legal issues with regard to the seniority of respondent Nos.3 and 4 had been rejected by the petitioner Institute by a non-speaking order dated 4.1.2017 which was illegal. The Original Application was held to be within limitation. On merits the learned Tribunal then relied on Regulation 34 of the PGIMER Regulations, 1967, which are as under:

"34. Seniority:- Seniority of employees of the Institute in each category shall be determined by the order of merit in which they were selected for appointment to the grade in question, those selected on earlier occasion being ranked senior to those selected later:

Provided that the seniority interse of employees, other than the teaching staff of Institute shall be determined by the length of continuous service on a post in a particular service:

Provided further that in the case of members, recruited by direct appointment, the order of merit determined by the Commission



or the Selection Body shall not be disturbed in fixing the seniority.

Provided further that in case of two members appointed on the same date, their seniority shall be determined as follows-

(a) member recruited by direct appointment shall be senior to a member recruited otherwise:-

(b) a member appointed by promotion shall be senior to a member appointed by transfer:

(c) in the case of members appointed by promotion or other transfer seniority shall be determined according to the seniority of such members in the appointments from which they were promoted or transferred; and

(d) in case of members appointed by transfer from different cadres, their seniority shall be determined according to pay, preference being given to a member who was drawing a higher rate of pay in his previous appointment and if the rates of pay drawn are also the same, then by their length of service in those appointments and if the length of such service is also the same an older member shall be senior to a younger member.

Note: 1 This rule shall not apply to members appointed on purely provisional basis pending their passing the qualifying test.

Note:2 In the case of members whose period of probation is extended the date of appointment for the purpose of these rules shall be deemed to have been deferred to the extent the period of probation is extended."

It was held that in terms of the proviso to this regulation a member recruited by direct appointment shall be senior to a member recruited

otherwise. As respondent No.1 was directly appointed and respondents No.3 and 4 were promoted under the APS Scheme he would rank senior to them. It was also held that there is no provision in the APS Scheme for grant of retrospective promotion. Accordingly, the Original Application was allowed.

We have heard learned counsel for the parties and perused the record.

We are of the view that in the facts and circumstances of the case, the Tribunal was not justified in entertaining the petition and the same was liable to be dismissed on the ground of limitation and delay and laches. Further respondent No.1 was estopped from challenging the grant of retrospective seniority to respondents No.3 and 4 with effect from the date of their eligibility under the APS Scheme being himself a beneficiary of retrospective promotion under that Scheme at an earlier stage in his service career.

After the approval of the recommendations of the Selection Committee under the APS Scheme by the Governing Body of the Institute in its meeting held on 20.12.2005 respondents No.3



and 4 were promoted as Professors w.e.f. 1.7.2002 vide office orders dated 21.12.2005. Thereafter, a provisional seniority list dated 17.8.2006 was circulated which reflected their date of appointment as 1.7.2002. Respondent No.1 in his representation dated 16.7.2007 raised a grievance regarding the seniority assigned to Professors figuring at Sr.Nos.60, 66 and 67, whose appointment was by direct recruitment on the ground that they had joined at a later date. No grievance was raised regarding the seniority of respondents No.3 and 4. It was on 19.8.2016 that for the first time he raised a grievance regarding the grant of retrospective promotion to respondents No.3 and 4 and assigning them seniority on that basis. This was about eleven years after their promotion on 21.12.2005 w.e.f., 1.7.2002. It was clearly barred by limitation. It is well settled that disputes relating to seniority cannot be permitted to be raised at a belated stage.

In **P.S. Sadasivaswamy v. State of T.N., (1975) 1 SCC 152** Hon'ble Supreme Court observed:

"2..... A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal."

Similarly, in **B.S. Bajwa v. State of Punjab, (1998) 2 SCC 523** it was held as under:

"7. Having heard both sides we are satisfied that the writ petition was wrongly entertained and allowed by the Single Judge and, therefore, the judgments of the Single Judge and the Division Bench have both to be set aside. The undisputed facts appearing from the record are alone sufficient to dismiss the writ petition on the ground of laches because the grievance was made by B.S. Bajwa and B.D. Gupta only in 1984 which was long after they had entered the department in 1971-72. During this entire period of more than a decade they were all along treated as junior to the other aforesaid persons and the rights inter se had crystallised which ought not to have been reopened after the lapse of such a long period. At every stage others were promoted before B.S. Bajwa and B.D. Gupta and this position



was known to B.S. Bajwa and B.D. Gupta right from the beginning as found by the Division Bench itself. It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a 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 alone was sufficient to decline interference under Article 226 and to reject the writ petition."

The ratio of the above decisions is clearly applicable in this case. It has come on record that respondent No.1 was promoted under the APS Scheme as Associate Professor on 29.9.2000 with retrospective effect from 1.7.1999 and then again on the post of Additional Professor (General Surgery) with retrospective effect from 1.7.2003. Being a beneficiary of retrospective promotion under this Scheme he is stopped from challenging the grant of similar benefit to others.

Thus, we are of the view that the Ld. Tribunal has wrongly entertained the OA which was liable to have been dismissed on the grounds of limitation, delay and laches as also estoppel. Consequently, there was no occasion for the Tribunal to adjudicate on the case on merits. Accordingly, these writ petitions are allowed. The order of The order of the Tribunal is set aside.

As these petitions have been allowed on preliminary grounds, we make it clear that we have not expressed any opinion on the merits of the other contentious issues decided by the Tribunal."

21. The respondent PGIMER itself had opposed the claim of Prof. Arunanshu Behera (supra) in this Tribunal on the ground that his claim was barred by the law of limitation but that plea did not find favour with this Tribunal. However, such plea was accepted in judicial review by the Hon'ble High Court and claim was rejected being barred by law of limitation. In one case, in similar circumstances, the respondent PGIMER says that same is barred by limitation



and in another case it revives a belated claim, without any logic or reason and ignoring the settled sit-back principle.

22. In this case, admittedly the seniority lists were issued from time to time starting from 2001, on the basis of promotions have also taken place, but those events were allowed to be settled by the respondent no.4 as he never challenged those things at relevant point of time and once a right has been created in applicant of being senior than respondent no.4, then he (respondent no.4) cannot be allowed to turn around after two decades and claim that he was senior to applicant at the time of initial appointment. Such a claim, to say the least, would be barred by the principle of estoppel.

23. Before parting we would like to deal with the law cited on behalf of the respondents. Reliance was placed on decision of Hon'ble Jurisdictional High Court in the case of **MRS. ASHA RANI LAMBA V S. STATE OF HARYANA**, 1983 (1) SLR, 400 to argue that once a person is promoted from retrospective date, he or she becomes entitled to arrears of pay as the same would not be barred by limitation. Reliance is also placed upon **MADRAS PORT TRUST V. HYMANSHU INTERNATIONAL**, 1979 AIR (SC) 1144 to claim that plea of



limitation should not ordinarily be taken by Government or Public Authority. Apparently, both these decisions do not help the respondents, from any angle, at all. They then referred to a decision of Hon'ble Punjab and Haryana High Court in **RAJ KUMAR BATRA VS. STATE OF HARYANA**, 1992(1) SCT 129, in which it was held that Government can undo a wrong any time and delay can be a bar in granting relief by court but not when a mistake is corrected by Government itself. This decision would be of no help to the respondents in view of observations made by Division Bench of Hon'ble Jurisdictional High Court in the case of Prof. Arunanshu Behera (supra). This issue is also no longer-res integra and stands settled by now, that even if administrative authorities want to carry our review and there be no limitation, even then such revision can be done within a reasonable time and not after a long lapse of time.

24. In the case of **SANTOSH KUMAR SHIVGONDA PATIL V. BALASAHEB TUKARAM SHEVALE** 2009 9 SCC 352 in para 11, the Hon'ble Supreme Court held as under :-

"11. It seems to be fairly *settled* that if a statute *does* not prescribe the *time*-limit for exercise of revisional power, it *does* not mean that such power can *be* exercised at any *time*; rather it should *be* exercised within a reasonable *time*. It is so because the *law does not expect a settled thing to be unsettled after a long lapse of time*. Where the



legislature *does* not provide for any length of *time* within which the power of revision is to be exercised by the authority, suo motu or otherwise, it is plain that exercise of such power within reasonable *time* is inherent therein."

It is, thus, clear that in the name of principle that delay bars a remedy through a court of law and it does not apply to the department, the respondents cannot be allowed to unsettle settled things more so in view of the law declared in the indicated case that even if there be no limitation for revision, even then such review has to be carried out within a reasonable time and in this case the things which were settled in 2001 are sought to be unsettle in 2018, which is not permissible, at all, from any angle.

25. The Hon'ble Supreme Court in the case of **H.S.VANKANI V. STATE OF GUJARAT**, (2010) 4 SCC 301, underlined the importance of seniority and the consequences of unsettling the seniority and has held as under :-

"38. Seniority is a civil right which has an important and vital role to play in ones 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 ones 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 ones 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 a 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 the salary they earn, may not match the litigation expenses and professional fees and may at times 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 a 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.

39. 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 times calls for departmental action."

26. On a close examination of factual scenario and legal proposition and following the authoritative law of the law laid down by their Lordships that seniority once settled is decisive in the upward march in ones chosen work or calling and gives certainty and assurance and boosts the morale to do quality work; it instills confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration, the inescapable conclusion and answer to the question raised in opening para of this order is that the tentative/provisional seniority list, which existed for over two decades and was acted upon for making further promotions for all these years, cannot be called as tentative/provisional and it cannot be, tinkered with, after such huge delay of over two decades on the touch stone of sit



back principle, limitation, delay and laches, estoppel and acquiescence.

27. In the wake of aforesaid discussion, this O.A. is allowed. The impugned order dated 12.4.2019 (Annexure A-15) is quashed and set aside. Simultaneously, the official respondents are directed to restore the seniority of applicant over respondent no. 4, in seniority list dated 25.9.2018 (Annexure A-12), with all the consequential benefits, if any. The connected M.As, if any, also stand disposed of.

28. The parties are, however, left to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(A.K. BISHNOI)
MEMBER (A)

Place: Chandigarh
Dated: 24.12.2019

HC*

