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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 02nd May, 2023*

+ **W.P.(C) 5679/2017 & C.M. APPL. 32134/2019**

SHRI NARESH KUMAR Petitioner
Through: Mr. Sachin Chauhan, Advocate
along with Petitioner-in-person.
versus

**THE CHAIRMAN, INDRAPRASTHA POWER
GENERATION CO. LTD. (IPGCL) & ORS..... Respondents**
Through: Mr. Tariq Farooqi, Advocate
for R-3.

**CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH**

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petition has been filed by the Petitioner seeking the following relief:-

“(i) Issue an appropriate writ in the nature of mandamus or any other appropriate writ and to quash and set-aside order dated 27.08.2015 whereby the representation of petitioner has been rejected, order dated 13.02.2017 whereby the representation of petitioner dated 15.12.2016 has been rejected, order dated 02.03.2006 is being challenged to an extent whereby it does not granted the first TBPS w.e.f. 2004 (at par with his batchmates and a consequence of the same the petitioner would also be entitled for the benefit of 2nd TBPS w.e.f. August, 2012 in the GP of 4000) and granted the first TBPS to the petitioner w.e.f. 2005, order dated 13.01.2016 is being challenged to extent whereby it does not granted the pay scale in the Grade Pay of Rs.4600 and granted the Grade Pay of Rs.3600/- and to further direct the respondents that the notional seniority of the petitioner, notional pay of the petitioner and further the benefit of Time Bound Promotional Scale (TBPS) 1st and 2nd has to be calculated from the original date of offer of appointment i.e. 10.10.1994 at par with the batchmate/juniors of the petitioner with all consequential benefits including seniority & promotion and pay & allowances and arrears thereof.”

2. Facts to the extent relevant and as emerging from the narrative in the writ petition are that Petitioner participated in a recruitment

process for the post of Junior Clerk, initiated by Delhi Electric Supply Undertaking ('DESU') in the year 1994 and appeared in the written test followed by a skill test and emerged successful. A selection notice dated 26.07.1994 was issued by DESU wherein name of the Petitioner was at Serial No.49. An offer of appointment was issued thereafter on 10.10.1994 to which the Petitioner submitted his acceptance on 17.10.1994. At that stage, admittedly an FIR No. 214/1992 was pending against the Petitioner under Section 308 IPC, which was disclosed at the time of verification of character and antecedents of the Petitioner.

3. In the offer of appointment, it was clearly stipulated that continued retention in service of the Petitioner was subject to satisfactory verification of character and antecedents. On several representations being made by the Petitioner for joining the post, an order was issued on 27.12.1995 permitting the Petitioner to join on the post of Junior Clerk, subject to the outcome of the criminal case pending in the Court. On receipt of the appointment order, Petitioner joined his duties w.e.f. 28.12.1995.

4. The Criminal Court acquitted the Petitioner vide judgment dated 09.05.1996 and Petitioner represented on 14.08.1996 to delete the condition of his appointment taking note of the judgment of acquittal. A letter was issued on 21.11.1996 whereby the stipulation of his conditional appointment was withdrawn in light of the judgment dated 09.05.1996.

5. DESU was restructured and Delhi Vidyut Board ('DVB') was formed in 1997. In 2002, DVB was unbundled into six DISCOMS and Petitioner joined Indraprastha Power Generation Company Ltd. ('IPGCL')/Respondent No.1 herein. Petitioner was posted with IPGCL in 2002 and on 15.01.2003, a seniority list was issued in the

grade of Assistant Grade-III with pay scale Rs.4000-7100 wherein the name of the Petitioner was at Serial No.92 with the date of initial appointment reflected as 28.12.1995 against his name. Sh. Y.K. Singh and Sh. Naresh Rana, batchmates of the Petitioner were shown at seniority positions 66 and 82 respectively.

6. First Time Bound Promotional Scale ('TBPS') under the Career Progression Scheme was granted to the Petitioner vide order dated 02.03.2006 w.e.f. 28.12.2005 in pay scale of Rs.4200-9100. First TBPS was granted on completion of 10 years of regular service in 2006 reckoning the appointment of the Petitioner from 28.12.1995 instead of 10.10.1994/17.10.1994. Another seniority list was issued on 01.02.2008 in the Grade of Assistant Grade-III where the name of the Petitioner figured at Serial No.54, which was subsequently brought upto Serial No.47 below his batchmate Sh. Naresh Rana. In 2013, the TBPS was discontinued and a uniform scheme for promotion and rationalization of scales was introduced w.e.f. 07.11.2012.

7. Another seniority list was issued on 10.01.2014 by the Respondents whereby Petitioner was accorded seniority at the bottom of the list with his batchmates. Representation was made by the Petitioner on 21.02.2015 for grant of notional seniority and pay as well as for predating First and Second TBPS, calculating commencement of regular service from the date of offer of appointment i.e. 10.10.1994. Representation was rejected by order dated 27.08.2015 primarily on the ground that all service benefits can only be granted from the date of joining the organization and not from the date of issue of appointment letter. It is this order which is impugned by the Petitioner amongst other reliefs. As per the averments in the petition, Petitioner was subsequently promoted to the post of Senior Assistant (HR) in Pay Level-5 w.e.f. 13.01.2016 while

his batchmates are in higher pay levels and this led to the Petitioner approaching this Court seeking multiple reliefs including challenge to an order dated 13.02.2017, whereby his representation dated 15.12.2016 was rejected.

8. Grievances of the Petitioner as put forth by Mr. Chauhan, learned counsel for the Petitioner, are manifold. It is contended that Petitioner was denied joining on the post of Junior Clerk immediately on issue of offer of appointment dated 10.10.1994 only on the ground of pendency of the criminal case and once the case resulted in an acquittal, the entire stigma stood obliterated and Petitioner is, therefore, entitled to reckon his regular service from 10.10.1994, the date of offer of appointment instead of from the date of joining i.e. 28.12.1995. Once the original date is restored, Petitioner will be entitled to his notional seniority from 10.10.1994 as well as the 1st and 2nd TBPS along with his batchmates from the years 2004 and 2012 respectively.

9. It is also contended that the effect of reckoning the service of the Petitioner from 28.12.1995 is that his seniority vis-à-vis his batchmates has been affected adversely and there is also a difference in the salary and emoluments on account of a difference in the dates of grant of TBPS and increments. Law does not permit the Respondents to choose a date for reckoning the commencement of regular service as that can only be the date on which an offer of appointment is issued to an employee and cannot be taken from the date of actual joining, which can vary from case to case depending on circumstances.

10. *Per contra*, learned counsel for the Respondents opposes the relief sought in the writ petition. At the outset, a preliminary objection is raised to the maintainability of the writ petition on ground of delay and laches and the argument is that Petitioner knew way back in 1995

or at least in 1996 that his regular service was not reckoned from 10.10.1994, but from the date of actual joining. This fact again came to light in 2006 when Petitioner was granted the 1st TBPS w.e.f. 2005, calculating his regular service from 28.12.1995 and if he was aggrieved, he should have taken recourse to legal remedies then. Instead, the Petitioner waited upto 2017 to approach the Court i.e. for two decades from the date of joining and over a decade from the grant of 1st TBPS and received 2nd TBPS and a regular promotion in the meantime.

11. It is also contended that once the Petitioner disclosed the factum of pendency of an FIR against him, it was stipulated in the appointment letter that his appointment will be subject to the outcome of the criminal case. While it was open to DESU to cancel his offer on account of pendency of the criminal case at that stage, however, this harsh action was not taken and taking a lenient view, he was permitted to join, subject to the final result of the criminal case. The plea of the Petitioner that the commencement of his regular service, notional seniority, grant of increments, etc. be taken from the date of offer letter and the dates of his promotions be antedated is against the settled law that regular service can be counted only from the date when an employee is borne in the cadre and seniority etc. are consequential thereto.

12. I have heard learned counsels for the parties and examined their rival contentions.

13. First and foremost, this Court is required to examine the preliminary objection raised by the Respondents to the maintainability of the writ petition on ground of delay and laches. The aspect of delay will have to be contextualised in light of the reliefs sought by the Petitioner. From a plain reading of the prayer clause, it is

luminously clear that Petitioner essentially seeks commencement and counting of his regular service from 10.10.1994 i.e. the date of offer of appointment issued to him. Petitioner further seeks ante-dating of the 1st and 2nd TBPS at par with his batchmates and notional seniority above his juniors as well as impugns the orders rejecting his representations. Holistically seen, the reliefs entail re-fixing the date of commencement of his regular service and seniority above his juniors, who are named in the writ petition, but are not impleaded as parties. Law on entertaining writ petitions raising stale claims is too well settled to debate and where the stale claims relate to agitating or disputing a long-settled seniority, the Courts have always taken the view that long-settled seniority should not be unsettled. In this context, there is a wealth of judicial precedents, however, I may refer to the judgment of the Supreme Court in ***Shiba Shankar Mohapatra and Others v. State of Orissa and Others*, (2010) 12 SCC 471**, wherein several earlier judgments on this aspect have been taken note of and the relevant passages are as follows:-

“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 Shankar Deodhar v. State of Maharashtra [(1974) 1 SCC 317 : 1974 SCC (L&S) 137] 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 [(1969) 1 SCC 110], 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 : (Tilokchand case [(1969) 1 SCC 110], SCC p. 115, para 7)

“7. ... The party claiming fundamental rights must move the Court before other rights come into existence. The action of courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court.”

19. This Court in *Ramchandra Shankar Deodhar case [(1974) 1 SCC 317 : 1974 SCC (L&S) 137]* also placed reliance upon its earlier judgment of the Constitution Bench in *Rabindranath Bose v. Union of India [(1970) 1 SCC 84]*, wherein it has been observed as under : (*Rabindranath Bose case [(1970) 1 SCC 84]*, SCC p. 97, para 33)

“33. ... 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.”

20. In *R.S. Makashi v. I.M. Menon [(1982) 1 SCC 379 : 1982 SCC (L&S) 77]* 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 M.P. v. Bhailal Bhai [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 : (*R.S. Makashi case [(1982) 1 SCC 379 : 1982 SCC (L&S) 77]*, SCC pp. 398-400, paras 28 & 30)

“28. ... ‘33. ... we must administer justice in accordance with law and principles 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. ...’ [Ed. : As observed in Rabindranath Bose v. Union of India, (1970) 1 SCC 84, p. 97, para 33.]

* * *

30. ... 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 22-3-1968 ought to have been rejected by the High Court on the ground of delay and laches and the writ petition insofar 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 v. R.P. Singh [(1986) 4 SCC 531 : 1987 SCC (L&S) 6 : AIR 1986 SC 2086] . The Court held as under : (SCC pp. 532 & 536, paras 2 & 7)*

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

* * *

7. ... Satisfactory service conditions postulate that there should 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 as otherwise in addition to the creation of a sense of insecurity in the minds of the government servants there would also be administrative complications 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.”

(emphasis added)

22. *While deciding K.R. Mudgal case [(1986) 4 SCC 531 : 1987 SCC (L&S) 6 : AIR 1986 SC 2086] , this Court placed reliance upon its earlier judgment in Malcom Lawrence Cecil D'Souza v. Union of India [(1976) 1 SCC 599 : 1976 SCC (L&S) 115 : AIR 1975 SC 1269] , wherein it had been observed as under : (Cecil D'Souza case [(1976) 1 SCC 599 : 1976 SCC (L&S) 115 : AIR 1975 SC 1269] , SCC p. 602, para 9)*

“9. Although security of service cannot be used as a shield against administrative action for lapses of a public servant, by and large one of the essential requirements of contentment and efficiency in public services 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 the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result 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.”

(emphasis added)

23. *In B.S. Bajwa v. State of Punjab [(1998) 2 SCC 523 : 1998 SCC (L&S) 611] this Court while deciding the similar issue*

reiterated the same view, observing as under : (SCC p. 526, para 7)

“7. ... 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.”

(emphasis added)

24. *In Dayaram A. Gursahani v. State of Maharashtra [(1984) 3 SCC 36 : 1984 SCC (L&S) 341] , while reiterating 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 T.N. [(1975) 1 SCC 152 : 1975 SCC (L&S) 22] this Court considered the case where the petition was filed after a lapse of fourteen years challenging the promotion. However, this Court held that the aggrieved person must approach the Court expeditiously for relief and it is not permissible to put forward stale claim. The Court observed as under : (SCC p. 154, para 2)*

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

The Court further observed that it was not that there was any period of limitation for the courts to exercise their powers under Article 226 nor was it that there could never be a case where the courts cannot interfere in a matter after certain length of time. It would be a sound and wise exercise of jurisdiction for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of 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 claim and try to unsettle settled matters.

26. *A similar view has been reiterated by this Court in Sudama Devi v. Commr. [(1983) 2 SCC 1]; State of U.P. v. Raj Bahadur Singh [(1998) 8 SCC 685 : 1999 SCC (L&S) 252] and Northern Indian Glass Industries v. Jaswant Singh [(2003) 1 SCC 335].*

27. *In Dinkar Anna Patil v. State of Maharashtra [(1999) 1 SCC 354 : 1999 SCC (L&S) 216] this Court held that delay and laches in challenging the seniority is always fatal, but in case the party satisfies the Court regarding delay, the case may be considered.*

28. *In K.A. Abdul Majeed v. State of Kerala [(2001) 6 SCC 292 : 2000 SCC (L&S) 955] this Court held that seniority assigned to any employee could not be challenged after a lapse of seven years on the ground that his initial appointment had been irregular, though even on merit it was found that seniority of the petitioner therein had*

correctly been fixed.

29. *It is settled law that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion. No party can claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the court is guilty of delay and the laches. The court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallises in the interregnum. (Vide Aflatoon v. Lt. Governor of Delhi [(1975) 4 SCC 285 : AIR 1974 SC 2077] ; State of Mysore v. V.K. Kangan [(1976) 2 SCC 895 : AIR 1975 SC 2190] ; Municipal Council, Ahmednagar v. Shah Hyder Beig [(2000) 2 SCC 48] ; Inder Jit Gupta v. Union of India [(2001) 6 SCC 637 : 2001 SCC (L&S) 1083] ; Shiv Dass v. Union of India [(2007) 9 SCC 274 : (2007) 2 SCC (L&S) 395] ; A.P. SRTC v. N. Satyanarayana [(2008) 1 SCC 210 : (2008) 1 SCC (L&S) 161] and City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla [(2009) 1 SCC 168]).*

30. *Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In K.R. Mudgal, this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation.”*

14. It would also be profitable to refer to a recent judgment of the Supreme Court in ***Dr. Akshya Bisoi and Another v. All India Institute of Medical Sciences and Others***, (2018) 3 SCC 391, wherein it was held as follows:-

“19. The Court is confronted in the present case with a situation in which recruitment to the post of Additional Professor was carried out in 2005. That was well over 12 years ago. The petitioners have instituted these proceedings under Article 32 in November 2017 to question the order of ranking made by the Selection Committee on 12-9-2005. There is no cogent explanation for this belated recourse to legal remedies. The petitioners cannot legitimately explain the delay on their part merely by contending that they were representing to the first respondent to remedy their grievances. The petitioners may have believed in good faith that the AIIMS administration would pay heed to their grievances. They had a sympathetic ear of the Union Ministry of Health and Family Welfare. But twelve years is too long a period, by any means, to not seek recourse to judicial remedies. As the narration of facts would indicate, the governing

body had on 14-4-2012 decided to maintain the order of merit in terms of which the fourth respondent was ranked first, above the two petitioners. Even thereafter, a three-member committee was constituted by the governing body in October 2012 and a decision was once again taken on 19-7-2013 to maintain the order of seniority. This was reiterated on 12-5-2014 and 22-6-2016. The petitioners were thus aware of the consistent position which was adopted by the first respondent. The delay on their part in seeking recourse to their legal remedies must weigh against them. At this stage it would be manifestly unfair to unsettle the inter se seniority between the three Professors in the CTVS Department by reopening the recommendation made by the Selection Committee in 2005.

20. In holding that an unexpected delay on the part of the petitioners would disentitle them to relief, we place reliance on a judgment of this Court in *State of Uttaranchal v. Shiv Charan Singh Bhandari* [*State of Uttaranchal v. Shiv Charan Singh Bhandari*, (2013) 12 SCC 179 : (2014) 3 SCC (L&S) 32]. The learned Chief Justice, after adverting to the settled position of law in that regard, observed thus : (SCC pp. 185-86, paras 27-28)

“27. We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. ... the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Anyone who sleeps over his right is bound to suffer. ...

28. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the Tribunal and accepted by the High Court.”

There has to be an element of repose and a stale claim cannot be resuscitated.

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24. In the present case, the record of the court indicates that while making its recommendations for appointment to the post of Additional Professor, the Selection Committee had borne in mind the performance of the candidates, their records as well as the opinion of the technical experts. The minutes of the meeting of 12-9-2005 indicate that the views of the technical experts were considered. To re-evaluate what took place well over twelve years ago would neither be feasible nor appropriate. The policy decision of 1997 indicates that the gradings given by all the members of the Selection Committee and the technical experts are to be placed before the Chairman of the Selection Committee and the final selection “may

be made” on the basis of the gradings/markings given by the members of the Selection Committee and the technical experts. The Selection Committee which was constituted in 2005 considered the issue of selection and inter se ranking of the selected candidates. In making its final recommendation in regard to their order of merit, upon appointment as Additional Professors, the Selection Committee had due regard to relevant matters including the performance of the candidates, their records and the opinion of the experts. Hence, the ranking which has been assigned cannot be regarded as being in breach of the policy decision of 1997. It would be iniquitous to unsettle the position of seniority, over twelve years after the petitioners and the fourth respondent were selected as Additional Professors. Even thereafter, when each of them has been promoted as a Professor, it is the fourth respondent who has been ranked higher than the petitioners.

25. *For the above reasons, we have come to the conclusion that the grant of relief would unsettle the inter se seniority between the petitioners and the fourth respondent well over twelve years since the recommendation of the Selection Committee for appointment as Additional Professors. This cannot be done. Some expressions of opinion in favour of the first petitioner in the departmental processes may have engendered a sense of hope. But that cannot furnish a legal ground to unsettle something that has held the field for long years. We close the proceedings with the expectation that these distinguished doctors will pursue their avocations at AIIMS without rancour. Our decision on seniority is no reflection upon their distinguished service to a premier national institution.”*

15. The common thread and the singular point that emerges from a conspectus of all the aforementioned judgments is that settled seniority should not be reopened after a lapse of unreasonable period of time, as upsetting a long existing seniority at the instance of one or some employees has an adverse impact on the settled seniority and vested rights of other co-employees. This law has developed on a sound rationale and first principle of entertaining a writ that those who sit back and sleep over their rights cannot be given a premium for waking up from a deep slumber after years and allowed to assert and claim better rights of seniority than the others in competition, so as to upset the apple cart.

16. The objection of delay and laches raised in the present petition

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Signed By: KAMAL KUMAR W.P.(C) 5679/2017

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the judgments, aforementioned. It is undisputed that when the appointment letter was issued to the Petitioner, he was informed that his appointment was subject to the outcome of the criminal case. The chronology of dates and events shows that he was permitted to join w.e.f. 28.12.1995 but at that stage, he raised no objection to his appointment being conditional or the delay in joining. The appointment letter was accepted and Petitioner joined, without any protest or demur. It is equally undisputed that in the seniority list issued on 15.01.2003, which is annexed to the writ petition, in the column pertaining to date of appointment, the date indicated against the name of the Petitioner was 28.12.1995. Similarly, in the subsequent seniority lists issued in 2008, the date of appointment was clearly indicated. While the Petitioner made a representation dated 26.02.2008 against the seniority list, however, on failing to get any response, the issue was not agitated any further and admittedly the Petitioner took no recourse to the legal remedies. In 2006, Petitioner was granted 1st TBPS calculating the 10 years eligibility period from 28.12.1995 i.e. the date of joining. He accepted the order without a demur and also received the 2nd TBPS in 2012. A representation was made by the Petitioner on 21.02.2015 raising a grievance with respect to notional seniority, etc. and to bring him at par with his batchmates, which was rejected on 27.08.2015 but again he did not resort to legal remedies to challenge the order and was thereafter promoted as Senior Assistant (HR) w.e.f. 13.01.2016.

17. The narrative highlights that Petitioner was aware from the year 1996 that his date of joining is being reckoned as 28.12.1995 and not 10.10.1994. Even assuming for the sake of arguments that it did not dawn upon the Petitioner that the commencement of his service was taken from the date of his actual joining at that stage, he certainly

knew of this fact in 2003 when the seniority list was issued indicating the date of his appointment and most certainly in 2006 when he was given 1st TBPS, calculating the starting point of the eligibility period of 10 years from 28.12.1995 and not 10.10.1994. No steps were taken even at that stage to challenge the date of appointment and/or his seniority or delayed grant of TBPS. Much water has flown from then to now inasmuch as in the meantime vested rights have accrued in favour of his batchmates/juniors, which cannot be taken up at this late stage. Entertaining this writ petition and granting the reliefs sought would amount to calculating Petitioner's regular service from 10.10.1994 and antedating his TBPS/regular promotion as well as re-fixing his inter-se seniority and this exercise would most certainly impact his batchmates/juniors at this belated stage and that too in their absence, a consequence which law does not envision or permit, at the instance of an employee who sleeps over his rights for nearly 20 years at the same time continuing to receive benefits of TBPS and regular promotion, without a demur.

18. In *Dr. Akshya Bisoi (supra)*, the Supreme Court was confronted with almost the same position. Recruitment to the post of Additional Professor was carried out by AIIMS in 2005. 12 years later, Petitioners instituted proceedings under Article 32 of the Constitution of India to question the order of ranking made by the Selection Committee on 12.09.2005 with no cogent explanation for the belated recourse to legal remedies. The Supreme Court negated the contention that Petitioners were making representations in this period and this would be a sufficient reason to overlook the delay and observed that 12 years was too long a period, by any means, to not seek recourse to judicial remedies. It was observed that Petitioners were aware of the consistent position adopted by AIIMS and

the delay on their part must weigh against them as also that at that late stage, it would be manifestly unfair to unsettle the *inter se* seniority between three Professors in the Department by reopening recommendations of the Selection Committee. In the present case, there is no cogent explanation rendered by the Petitioner for having slept over his rights at least from 2003, save and except, that he was making representations, a reason held to be unacceptable by the Supreme Court in the aforementioned judgment. Court thus sees no reason to interfere with the settled seniority position which has obtained in the Respondents' organization *qua* the batchmates of the Petitioner for over a decade or direct the Respondents to calculate the commencement of Petitioner's regular service from the date of offer of appointment at this belated stage.

19. There is yet another aspect of the matter. The relief sought by the Petitioner not only directly impinges on the long-settled seniority of his batchmates, but also amounts to indirectly ante-dating the date of joining to 10.10.1994 and calculating the length of his regular service from this date. Be it ingeminated that Petitioner actually joined DESU, the erstwhile organization of the Respondents on 28.12.1995 and was thus not even borne in the cadre on 10.10.1994, the date from which he seeks all service benefits today. It is trite that regular service cannot be reckoned from a date when the employee was not even borne in the cadre and seniority amongst members of the same Grade has to be counted from the date of initial entry into the Grade. [*Ref. P. Sudhakar Rao and Others v. U. Govinda Rao and Others, (2013) 8 SCC 693; Ganga Vishan Gujrati and Others v. State of Rajasthan and Others, (2019) 16 SCC 28 and State of Bihar and Others v. Arbind Jee, (2021) 14 SCC 38*].

20. For all the above reasons, the writ petition must fail and is accordingly dismissed. Pending application also stands disposed of.

JYOTI SINGH, J

MAY 02, 2023/kks

