

**THE HIGH COURT OF TRIPURA  
AGARTALA**

(1) WP(C) NO.375 OF 2006

**Sri Subhash Chandra Das,**  
S/O Sri Arun Kumar Das,  
Assistant Engineer(Civil)/AC,  
HQ B.S.F., Tripura Frontier,  
Salbagan, Agartala,  
West Tripura.

..... *Petitioner*

*Advocate for the petitioner:*  
*Mr. Somik Deb*

- Vs -

**1. The Union of India,**  
(Notice to be served upon the  
Secretary to the Government of India,  
Ministry of Home Affairs,  
New Delhi).

**2. The Director General,**  
Border Security Force,  
10, CGO Complex,  
Lodhi Road, New Delhi.

**3. Inspector General,**  
Border Security Force,  
Tripura Frontier,  
Salbagan, Agartala.

**4. Sri Balbir Singh Sandhu,**  
Assistant Engineer(C)/AC,  
HQ. Shillong Frontier B.S.F.,  
Shilling, Meghalaya.

**5. Sri Bhupinderjit Singh,**  
Assistant Engineer(C)/AC,  
HQ. Tripura Frontier, B.S.F.,  
Salbagan, Agartala.

..... *Respondents*

*Advocate(s) for the respondents:*

*For respondent Nos.1 to 3 : Mr. B. Majumder, CGC*  
*For respondent Nos.4 & 5 : Mr. Sankar Deb, Sr. Advocate*  
*Mr. S. Dutta, Advocate*

(2) WP(C) NO.248 OF 2009

**Sri Rakesh Kumar Srivastava,**

S/O Late P.L. Srivastava,

Now residing at B.S.F. Quarters at Agartala,  
West Tripura.

..... *Petitioner*

*Advocate(s) for the petitioner:*

*Mr. Sankar Deb, Sr. Advocate*

*Mr. S. Dutta, Advocate*

- *Vs* -

**1. The Union of India,**

Represented by the Home Secretary,  
Ministry of Home Affairs,  
Government of India,  
New Delhi.

**2. The Director General,**

Border Security Force,  
Block No.10, CGO Complex,  
Lodhi Road, P.O. New Delhi.

**3. Inspector General,**

Border Security Force,  
Frontier Headquarters,  
Salbagan, Tripura,  
P.O. Gandhigram.

**4. The Commandant Staff,**

Ministry of Home Affairs,  
HQ Director General of  
Border Security Force,  
P.O. Lodhi Road, New Delhi.

**5. Sri Subhas Chandra Das,**

S/O Sri Arun Kumar Das,  
Assistant Engineer(Civil)/AC,  
Engineering Branch, 7<sup>th</sup> Floor,  
BSF Headquarters,  
10, CGO Complex, Lodhi Road,  
New Delhi-110003.

**6. Smti. Shilpi Datta now Chatterjee,**

D/O Sri B.P. Datta,  
Assistant Engineer(Civil)/AC,  
Engineering Branch,  
DIG Headquarters-Force Headquarters, BSF,  
East Block No.9, R.K. Puram,  
New Delhi-110022.

..... *Respondents*

*Advocate(s) for the respondents:*

*For respondent Nos.1 to 4 : Mr. B. Majumder, CGC*

*For respondent Nos.5 & 6 : Mr. Somik Deb, Advocate*

(3) WP(C) NO.90 OF 2010

**Sri Bhupenderjit Singh,**

Executive Engineer(Civil)/Deputy Commandant,  
Now posted at Headquarters, Tripura Frontier,  
Border Security Force,  
Salbagan, West Tripura.

..... *Petitioner*

*Advocate(s) for the petitioner:*

*Mr. Sankar Deb, Sr. Advocate*

*Mr. S. Dutta, Advocate*

- Vs -

**1. The Union of India,**

Represented by the Home Secretary,  
Ministry of Home Affairs,  
Government of India,  
New Delhi.

**2. The Director General,**

Border Security Force,  
Block No.10, CGO Complex,  
Lodhi Road, New Delhi.

**3. The Commandant Staff,**

Ministry of Home Affairs,  
HQ Director General of  
Border Security Force,  
Block No.10, CGO Complex,  
Lodhi Road, New Delhi.

**4. Sri H.K. Chanda,**

Executive Engineer(Civil)/Deputy Commandant,  
Now posted at Headquarters Punjab Frontier, BSF,  
Jalandhar Cantt., Punjab.

**5. Sri Subhas Chandra Das,**

S/O Sri Arun Kumar Das,  
Assistant Engineer(Civil)/AC,  
Engineering Branch,  
Now posted at BSF Headquarters,  
10, CGO Complex, Lodhi Road,  
New Delhi-110003.

**6. Smti. Shilpi Chatterjee,**

D/O Sri B.P. Datta,  
Assistant Engineer(Civil)/AC,  
Engineering Branch,  
DIG Headquarters-Force Headquarters, BSF,  
East Block No.9, R.K. Puram,  
New Delhi-110022.

**7. Sri Sailender Singh,**  
Assistant Engineer(Civil)/AC,  
Engineering Branch,  
BSF Academy, P.O. Tekanpur,  
District-Gwalior,  
Madhya Pradesh(MP).

..... Respondents

*Advocate(s) for the respondents:*

*For respondent Nos.1 to 3 : Mr. B. Majumder, CGC*

*For respondent Nos.5 & 6 : Mr. Somik Deb, Advocate*

*For respondent Nos.4 & 7 : None*

### *(4) WP(C) NO.110 OF 2011*

**Sri Rakesh Kumar Shrivastava,**  
S/O Late Sri P.L. Shrivastava,  
Now residing at BSF Quarters at Agartala,  
District-West Tripura.

..... Petitioner

*Advocate(s) for the petitioner:*

*Mr. Sankar Deb, Sr. Advocate*

*Mr. S. Dutta, Advocate*

- Vs -

**1. The Union of India,**  
Represented by the Home Secretary,  
Ministry of Home Affairs,  
Government of India,  
New Delhi.

**2. The Director General,**  
Border Security Force,  
Block No.10, CGO Complex,  
Lodhi Road, New Delhi.

**3. The Inspector General,**  
Border Security Force,  
Frontier Headquarters,  
Salbagan, Tripura.

**4. The Commandant Staff,**

Ministry of Home Affairs,  
HQ Director General of  
Border Security Force,  
Lodhi Road, New Delhi.

**5. IRLA No.85100028 J.L. Raina 40695396,**

(now AC/GD w.e.f. 29.06.2006),  
Assistant Commandant,  
68 Bn. Border Security Force,  
Sambha, District-Jammu,  
Jammu & Kashmir.

**6. IRLA No.85008902 M.L. Dua 40261157**

(now DC/GD w.e.f. 15.07.2009),  
Deputy Commandant,  
36 Bn. Border Security Force,  
Kalyani, District-24 Parganas,  
West Bengal.

**7. Sri Subhas Chandra Das,**

S/O Sri Arun Kumar Das,  
Assistant Engineer(Civil)/AC,  
Engineering Branch,  
Now posted at BSF Headquarters,  
10, CGO Complex, Lodhi Road,  
New Delhi-110003.

..... *Respondents*

*Advocate(s) for the respondents:*

For respondent Nos.1 to 4 : Mr. B. Majumder, CGC  
For respondent No.7 : Mr. Somik Deb, Advocate  
For respondent Nos.5 & 6 : None

**BEFORE  
THE HON'BLE MR. JUSTICE S.C. DAS**

Dates of hearing : 09.07.2015, 10.07.2015,  
15.07.2015 & 16.07.2015

Date of delivery of  
Judgment & Order : **14.10.2015**

Whether Fit for Reporting :

| Yes | No |
|-----|----|
| √   |    |

## JUDGMENT & ORDER

WP(C) No.375 of 2006, WP(C) No.248 of 2009 and WP(C) No.90 of 2010, as mentioned hereinabove in Sl. Nos.1, 2 and 3, were taken up together in view of the judgment and order dated 05.05.2010 passed in Writ Appeal No.86 of 2007 arising out of WP(C) No.375 of 2006. WP(C) No.110 of 2011 as mentioned in Sl. No.4 hereinabove was filed later on, after judgment and order dated 05.05.2010 passed in Writ Appeal No.86 of 2007 and in view of order dated 30.11.2011 passed in that writ petition, *i.e.* WP(C) No.110 of 2011, the same also was taken up together.

I have heard learned counsel of the contesting parties as mentioned hereinbefore and this common judgment is passed which shall govern all the four writ petitions.

It may be mentioned here that respondent No.4 of WP(C) No.375 of 2006, respondent Nos.4 and 7 of WP(C) No.90 of 2010 and respondent Nos.5 and 6 of WP(C) No.110 of 2011 did not file any counter affidavit and did not contest the cases.

**2.** Shri Subhash Chandra Das(for short, S.C. Das), the petitioner of WP(C) No.375 of 2006, who has also been arrayed as respondent No.5 in WP(C) No.248 of 2009 and WP(C) No.90 of 2010 and also arrayed as respondent No.7 in WP(C) No.110 of 2011 and another Smti. Shilpi Chatterjee(for short, S. Chatterjee), respondent No.6 of WP(C) No.248 of 2009 and respondent No.6 of WP(C) No.90 of 2010, were appointed as direct recruits in the

combatised post of Assistant Engineer(Civil)/Assistant Commandant [hereinafter mentioned as AE(C)/AC].

The petitioners of WP(C) No.248 of 2009, WP(C) No.90 of 2010 and WP(C) No.110 of 2011 as well as respondent No.4 of WP(C) No.375 of 2006, respondent Nos.4 and 7 of WP(C) No.90 of 2010 and respondent Nos.5 and 6 of WP(C) No.110 of 2011 were originally appointed in G.D. post as Sub-Inspector/Junior Engineer(G.D.)(for short, JE, G.D.), later on were promoted to the post of AE(C)/AC.

It may be mentioned here that Shri Rakesh Kumar Shrivastava(for short, R.K. Shrivastava) is the petitioner of both WP(C) No.248 of 2009 and WP(C) No.110 of 2011 and Shri Bhupinderjit Singh (for short, Bhupinder) is the petitioner of WP(C) No.90 of 2010 and they got promotion to the post of AE(C)/AC pursuant to order passed by the High Court of Delhi and the High Court of Punjab & Haryana respectively.

**3.** By filing the writ petitions the petitioners raised multiple issues in respect of appointments/promotions, seniority, etc. of the petitioners and the private respondents in the post of AE(C)/AC.

**4.** For convenience, I would like to reproduce here the relief sought by the petitioners in their respective writ petitions.

**4.1.** The petitioner of WP(C) No.375 of 2006 sought following relief:

*"In the premises aforesaid it is prayed that your Lordship may be pleased to issue rule NISI calling upon the respondents to show cause as to why a writ of Certiorari should not be issued declaring that the Respondents No.4 and 5 are juniors to the petitioner in the post of AE(C)/AC and the seniority List dated 25.1.2006(Annexure-6) showing the name of the Respondents No.5 above the petitioner is wrong and he should be placed below in order of seniority;*

*-AND/OR-*

*as to why a writ of Certiorari should not be issued quashing, cancelling and/or setting aside the impugned retrospectivity of promotion of respondents No.4 and 5 vide order of promotion dated 20.6.2006 and 23.4.2004 respectively as they cannot be senior to the petitioner;*

*-AND/OR-*

*As to why a writ of Mandamus should not be issued directing the respondents to prepare separate seniority list for the post of AE(C)/AC, one for diploma holders promotee and another for direct recruits who are obviously Degree Holders and also for a direction upon the respondents not to promote any person to the post of EE(C)/DC meant for Degree Holders till the seniority of the petitioner is determined;*

*-AND/OR-*

*as to why any other appropriate writ or writs of Quo-warranto as may be deemed fit and just should not be issued so as to grant relief to the petitioner;*

*-AND-*

*In case the respondents show cause, your Lordship may be pleased to hear the parties and make the rule absolute;*

**-AND-**

*In the meantime your Lordship may be pleased to pass an interim order upon the respondents not to promote any person to the post of EE(C)/DC meant for degree holders till the seniority of the petitioner is determined, till disposal of the writ petition;”*

**4.2.** The petitioner of WP(C) No.248 of 2009 sought following relief:

- “i. Issue a Rule calling upon the respondents and each one of them to show cause as to why a Writ of Certiorari and/or in the nature thereof shall not be issued directing the respondent Nos.1 to 4 to consider the case of your humble petitioner for appointment to the post of Assistant Engineer w.e.f. 11.02.1995 and modify his order of appointment to the said post of Assistant Engineer w.e.f. 16.05.2000;*
- ii. Issue a Rule calling upon the respondents and each one of them to show cause as to why a Writ of Mandamus and/or in the nature thereof shall not be issued commanding/mandating each one of them not to give effect to the direction given to treat your humble petitioner as Assistant Engineer w.e.f. 11.02.1995;*
- iii. Issue a Rule calling upon the respondents and each one of them to show as to why a Writ of Certiorari and/or in the nature thereof shall not be*

*issued setting aside/quashing the order of appointment of the respondent Nos.5 and 6 to the post of Assistant Engineer w.e.f. 22.04.1997 (Annexure-P4 supra) and 11.11.1998(Annexure-P8 supra) respectively;*

- iv. Issue a Rule calling upon the respondents and each one of them to show as to why a Writ of Prohibition and/or in the nature thereof shall not be issued restraining/prohibiting the respondent Nos.1 and 4 from treating the respondent Nos.5 and 6 to the post of Assistant Engineer w.e.f. 22.04.1997(Annexure-P4 supra) and 11.11.1998 (Annexure-P8 supra) respectively;*
- v. In the interim in terms of above;*
- vi. After hearing the parties be pleased to make the Rule absolute in terms of above;”*

**4.3.** The petitioner of WP(C) No.90 of 2010 sought following relief:

- “i. Issue a Rule calling upon the respondents and each one of them to show cause as to why a Writ of Certiorari and/or in the nature thereof shall not be issued directing the respondents to quash the impugned tentative seniority list vide communication dated 07.10.2008(Annexure-P7 supra) and also the communication dated 18.01.2010(Annexure-P11 supra);*
- ii. Issue a Rule calling upon the respondents and each one of them to show cause as to why a Writ of Mandamus and/or in the nature thereof shall not be issued commanding/mandating each one*

*of them not to give effect to the impugned tentative seniority list vide communication dated 07.10.2008(Annexure-P7 supra) and also the communication dated 18.01.2010 (Annexure-P11 supra);*

- iii. Issue a Rule calling upon the respondents and each one of them to show cause as to why a Writ of Mandamus and/or in the nature thereof shall not be issued commanding/mandating each one of them to publish the inter se seniority list amongst the Assistant Engineer(Civil)/Assistant Commandant, Engineering Branch strictly in conformity with the averments made in the writ petition hereinabove;*
- iv. Issue a Rule calling upon the respondents and each one of them to show as to why a Writ of Prohibition and/or in the nature thereof shall not be issued restraining/prohibiting the respondents from giving effect to and/or acting upon the impugned tentative seniority list vide communication dated 07.10.2008( Annexure-P7 supra) and the communication dated 18.01.2010 (Annexure-P11 supra);*
- v. Issue a Rule calling upon the respondents and each one of them to show cause as to why a Writ of Quo Warranto shall not be issued declaring the appointments of the respondent nos.5 and 6 as not being in conformity with the Recruitment Rules for appointment to the post of Assistant Engineer(Civil)/Assistant Commandant(Annexure-P1 supra);*
- vi. In the interim in terms of iv. above;*

vii. *After hearing the parties be pleased to make the Rule absolute in terms i. to v. above;"*

**4.4.** The petitioner of WP(C) No.110 of 2011 sought following relief:

- "i. Issue a Rule calling upon the respondents and each one of them to show cause as to why a Writ of Certiorari and/or in the nature thereof shall not be issued directing the respondent Nos.1 to 4 to consider the case of your humble petitioner for appointment to the post of Assistant Engineer w.e.f. 11.02.1995 and modify his order of appointment to the said post of Assistant Engineer w.e.f. 16.05.2000 and also confer the consequential seniority to your humble petitioner in terms of the direction of the Hon'ble Delhi High Court in Civil Writ Petition No.667 of 2001(Annexure-P5 supra);*
- ii. Issue a Rule calling upon the respondents and each one of them to show cause as to why a Writ of Mandamus and/or in the nature thereof shall not be issued commanding/mandating each one of them not to give effect to the direction given to treat your humble petitioner as Assistant Engineer w.e.f. 11.02.1995;*
- iii. Issue a Rule calling upon the respondents and each one of them to show as to why a Writ of Certiorari and/or in the nature thereof shall not be issued setting aside/quashing the order of appointment of the respondent No.7 to the post of Assistant Engineer vide appointment order dated 22.04.1997 vide Annexure-P4 supra;*

- iv. *Issue a Rule calling upon the respondents and each one of them to show as to why a Writ of Certiorari and/or in the nature thereof shall not be issued setting aside/quashing the impugned order dated 02.02.2011 (Annexure-P10 supra) showing the respondent no.5, 6 and 7 and IRLA No.85800011 Amal Kumar Datta 40386829, since retired senior to your humble petitioner and also to declare the tentative seniority list dated 07.10.2008(Annexure-P9 supra) showing the said persons seniority to your humble petitioner to be illegal and inoperative;*
- v. *Issue a Rule calling upon the respondents and each one of them to show cause as to why a Writ of Mandamus and/or in the nature thereof shall not be issued commanding/mandating each one of them not to give effect to the impugned order dated 02.02.2011(Annexure-P10 supra) showing the respondent no.5, 6 and 7 and IRLA No.85800011 Amal Kumar Datta 40386829, since retired senior to your humble petitioner and also to declare the tentative seniority list dated 07.10.2008(Annexure-P9 supra) showing the said persons seniority to your humble petitioner and also to declare the tentative seniority list dated 07.10.2008(Annexure-P9 supra) to be illegal and inoperative and to treat your humble petitioner appointed to the post of Assistant Engineer w.e.f. in terms of the order passed on 27.08.2002(Annexure-P6 supra) and also to grant consequential seniority above the said respondent no.5, 6 and 7 and also the said IRLA No.85800011 Amal Kumar Datta 40386829, since retired;*

- vi. *Issue a Rule calling upon the respondents and each one of them to show as to why a Writ of Prohibition and/or in the nature thereof shall not be issued restraining/prohibiting the respondent Nos.1 to 4 from treating the respondent No.7 to the post of Assistant Engineer w.e.f. 22.04.1997(Annexure-P4 supra);*
- vii. *Issue a Rule calling upon the respondents and each one of them to show as to why a Writ of Prohibition and/or in the nature thereof shall not be issued restraining/prohibiting the respondents not to give effect the impugned order dated 02.02.2011(Annexure-P10 supra) showing the respondent no.5, 6 and 7 and IRLA No.85800011 Amal Kumar Datta 40386829, since retired senior to your humble petitioner and also to declare the tentative seniority list dated 07.10.2008(Annexure-P9 supra) to be illegal and inoperative;*
- viii. *In the interim in terms of above;*
- vii. *After hearing the parties be pleased to make the Rule absolute in terms of above;"*

**5.** WP(C) No.375 of 2006 was disposed of by the learned Single Judge of the then Agartala Bench of the Gauhati High Court by judgment dated 24.08.2007. The Union of India, Director General of BSF and Inspector General of BSF, *i.e.* the respondent Nos.1, 2 and 3 of that writ petition(hereinafter mentioned as official respondents in reference to all the writ petitions) filed Writ Appeal No.86 of 2007 before the Division Bench and by judgment dated

05.05.2010 the Division Bench set aside the judgment and order dated 24.08.2007 and remanded the case back to Single Bench for decision afresh along with other two writ petitions, *i.e.* WP(C) No.248 of 2009 and WP(C) No.90 of 2010. The petitioner of WP(C) No.375 of 2006 filed SLP before the apex Court but that was subsequently withdrawn.

**6.** The petitioner of WP(C) No.90 of 2010 earlier filed WP(C) No.379 of 2009 before the then Agartala Bench of the Gauhati High Court seeking almost identical relief and that writ petition was disposed of by order dated 07.12.2009 directing the respondent Nos.1 and 2 to dispose the writ petition of the petitioner submitted against communication dated 07.10.2008(draft seniority list) and representation dated 26.11.2008. Pursuant to that order dated 07.12.2009 the respondents disposed those representations by a detailed speaking order dated 18.01.2010(Annexure-P11 to the writ petition) which has been challenged by the petitioner in addition to the prayer made in earlier WP(C) No.379 of 2009.

**7.** For consideration and decision of the conflicting issues raised by the petitioners in the batch of writ petitions, the provisions of *Border Security Force, Engineering Cell(Class-I and Class-II posts) Recruitment Rules, 1975*(for short, Rules of 1975) and the *Border Security Force(Engineering Officers) Recruitment Rules, 2000*(for short, Rules of 2000) are very relevant and therefore the relevant part of Schedule to those Rules which relates

to the appointment of Assistant Engineer as prescribed in the Rules of 1975 and the provisions which relate to the appointment of Assistant Engineer(Civil)/Assistant Commandant as per the Rules of 2000 are quoted hereinbelow:

Schedule of the Rules of 1975

| <i>Sl. No.</i> | <i>Name of the post</i>    | <i>No. of posts</i> | <i>Classification</i>                     | <i>Scale of pay</i>                                | <i>Whether Selection post or Non-selection post</i> | <i>Age limit for direct recruits.</i> | <i>Educational &amp; other qualifications required for direct recruits</i> | <i>Whether age &amp; educational qualifications prescribed for the direct recruits will apply in the case of promotes</i> |
|----------------|----------------------------|---------------------|-------------------------------------------|----------------------------------------------------|-----------------------------------------------------|---------------------------------------|----------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| <i>1</i>       | <i>2</i>                   | <i>3</i>            | <i>4</i>                                  | <i>5</i>                                           | <i>6</i>                                            | <i>7</i>                              | <i>8</i>                                                                   | <i>9</i>                                                                                                                  |
| 2.             | Assistant Engineer (Civil) | Four                | General Central Service Class-II Gazetted | Rs.650-30-740-35-810-EB-35-880-40-1000-EB-40-1200. | Selection                                           | Not applicable                        | Not applicable                                                             | Not applicable                                                                                                            |

| <i>Period of probation if any</i> | <i>Method of recruitment whether by direct recruitment or by deputation/transfer &amp; % of the vacancies to be filled by various methods.</i> | <i>In case of recruitment by promotion/deputation/transfer, grades from which promotion/deputation/transfer to be made.</i>                                                                                                                                                                                                                                                              | <i>If a DPC exists, what is its composition</i> | <i>Circumstances in which UPSC is to be consulted in making recruitment.</i>                         |
|-----------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|------------------------------------------------------------------------------------------------------|
| <i>10</i>                         | <i>11</i>                                                                                                                                      | <i>12</i>                                                                                                                                                                                                                                                                                                                                                                                | <i>13</i>                                       | <i>14</i>                                                                                            |
| Two years                         | 50% by promotion and 50% by transfer on deputation                                                                                             | <u>Promotion:-</u> Junior Engineers with 8 years service in the grade rendered after appointment thereto on a regular basis.<br><u>Transfer on Deputation:-</u> Officers holding analogous posts or officers of the rank of Junior Engineers with 8 years service in the grade under the Central Government or State Governments(Period of deputation-ordinarily not exceeding 3 years.) | Class-II Departmental Promotion Committee.      | As required under the Union Public Service Commission (Exemption from Consultation) Regulation 1958. |

### Schedule of the Rules of 2000

| <i>Name of the Post</i>                               | <i>No. of post</i>                                                  | <i>Classification</i>                                                                   | <i>Scale of pay</i> | <i>Whether Selection-cum-Seniority or selection by merit or non-selection post</i> | <i>Whether benefit for added years of service admissible under Rule 30 of the Central Civil Service(Pension) Rules, 1972</i> |
|-------------------------------------------------------|---------------------------------------------------------------------|-----------------------------------------------------------------------------------------|---------------------|------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|
| <i>1</i>                                              | <i>2</i>                                                            | <i>3</i>                                                                                | <i>4</i>            | <i>5</i>                                                                           | <i>6</i>                                                                                                                     |
| 4.<br>Assistant Engineer (Civil)/Assistant Commandant | 20* (Twenty) (2000)<br>* Subject to variation dependent on workload | General Central Service, Group 'B', Gazetted, Non-Ministerial Engineering (Combatised). | Rs.6500-200-10500   | Selection by merit                                                                 | Not applicable                                                                                                               |

| <i>Age limit for direct recruits</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <i>Educational and other qualifications required for direct recruits</i>                                                                                                                                                                                                                                                                                                                                                                                                            | <i>Whether age and qualifications prescribed for direct recruits will apply in the case of promotion</i> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| <i>7</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <i>8</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <i>9</i>                                                                                                 |
| Between 21 to 26 years of age(Relaxable for Government servants in accordance with the instructions or orders issued by the Central government).<br>Note 1 : The crucial date for determining the age limit shall be the closing date for receipt of applications from candidates in India(and not the closing date prescribed for those in Assam, Meghalaya, Arunachal Pradesh, Mizoram, Manipur, Nagaland, Tripura, Sikkim, Ladakh Division of Jammu and Kashmir State, Lahaul and Spiti District and Pangti Sub-Division of Chamba District of Himachal Pradesh, Andaman and Nicobar Islands or Lakshadweep).<br>Note 2 : In respect of posts the appointment to which are made through the Employment Exchange, the crucial date for determining the age-limit shall, in each case be the last date upto which the Employment Exchanges are asked to submit the names. | Degree in Civil Engineering from a recognized University/Institution.<br>(b) Physical standard:<br>(i) Height—165 cms relaxable by 5 cms for hill tribes and Adivasis. Chest 76-81 cms relaxable by 2 cms for candidates below 20 years of age. Weight Corresponding to height.<br>(ii) Must possess good mental and sound health free from any physical defects.<br>(iii) Must have to qualify the physical test.<br>(iv) Must have to qualify written test followed by interview. | Not applicable                                                                                           |



**8.** For brevity, without discussing the pleadings of the parties in details, I would like to discuss the relevant parts of the pleadings and materials for deciding the material issues which fell for consideration and decision in the group of writ petitions, one after another.

**9.            *WHETHER THE DIRECT RECRUITMENT/ APPOINTMENT OF SHRI S.C. DAS, THE PETITIONER OF WP(C) NO.375 OF 2006 WHO HAS ALSO BEEN ARRAYED AS RESPONDENT NO.5 IN WP(C) NO.248 OF 2009 AND WP(C) NO.90 OF 2010 AS WELL AS RESPONDENT NO.7 IN WP(C) NO.110 OF 2011 AND THE DIRECT RECRUITMENT/ APPOINTMENT OF SMTI. S. CHATTERJEE, RESPONDENT NO.6 OF WP(C) NO.248 OF 2009 AND WP(C) NO.90 OF 2010 WERE VALID OR LIABLE TO BE SET ASIDE AND QUASHED?***

**9.1.** It is an admitted position that Shri S.C. Das was appointed as a direct recruit to the post of AE(C)/AC by the official respondents by issuing letter of appointment dated 30.05.1997 *w.e.f.* 13.05.1997(*Annexure-1* to WP(C) No.375 of 2006). It is also an admitted position that Smti. S. Chatterjee was also appointed as a direct recruit to the post of AE(C)/AC by the official respondents by dint of the letter of appointment dated 11.11.1998(*Annexure-P8* to WP(C) No.248 of 2009). In his writ petition Shri S.C. Das has contended that before the Rules of 2000 came into force the appointments, etc. to the post of AE(C)/AC were governed by executive instruction/administrative decision. Both Shri S.C. Das

and Smti. S. Chatterjee in their counter affidavit in WP(C) No.248 of 2009 and WP(C) No.90 of 2010 as well as Sri S.C. Das in his counter affidavit in WP(C) No.110 of 2011, *inter alia* contended that the official respondents made advertisement for appointment to the post of AE(C)/AC by direct recruitment of degree holder engineers and they applied for the post and got selection and accordingly they were appointed and it was pursuant to a Draft Recruitment Rule which was subsequently finalized and/or approved by Notification dated 16.05.2000, *i.e.* the Recruitment Rules of 2000.

**9.2.** The official respondents took a consistent stand that a Draft Recruitment Rule for appointment to the combatised post of AE(C)/AC was made and was sent to the Government of India for approval and there were posts sanctioned by the Union of India to meet the exigencies and while the Draft Recruitment Rules was under the consideration of the Union of India, but was delayed for different reasons, the appointments of Shri S.C. Das and Smti. S. Chatterjee were made in consideration of that Draft Recruitment Rules. A copy of the Draft Recruitment Rule has been produced along with the relevant file by the learned CGC at the time of hearing of the writ petitions. It is the consistent stand of the official respondents that the Draft Recruitment Rules prescribes the provision of direct recruitment and pursuant to that provision Shri S.C. Das and Smti. S. Chatterjee were appointed. In their counter affidavit the official respondents have taken a consistent stand that Shri S.C. Das and Smti. S. Chatterjee were appointed pursuant to

the provisions of the Draft Recruitment Rules which was sent to the Union of India for consideration and approval. Copy of the same was not annexed with the counter affidavit but a copy of the same along with relevant file has been submitted by learned CGC at the time of hearing and on perusal of the same, I find that the Draft Recruitment Rule appears to have prepared in 1996 and forwarded to the Government of India which consists of provisions for recruitment to different categories of posts including that of the post of Assistant Commandant(Engineer). Sl. No.4 of the Schedule deals with the recruitment to the post of Assistant Commandant(Engineer) and in different columns the age limit, educational qualifications, method of recruitment, etc. have been prescribed. In column 11 it has been prescribed that the posts of Assistant Commandant shall be filled up by promotion 50%, failing which by transfer on deputation and by direct recruitment 50%.

**9.3.** It is the case of Shri S.C. Das and Smti. S. Chatterjee as well the official respondents that pursuant to advertisement for recruitment to the post by direct recruitment the said Shri Das and Smti. Chatterjee applied and respondent No.4 of WP(C) No.375 of 2006 also applied for the post being graduate engineer and Shri Das and Smti. Chatterjee were selected and were appointed to the post as direct recruits as aforesaid.

**9.4.** It is alleged by the petitioners of WP(C) No.248 of 2009, WP(C) No.90 of 2010 and WP(C) No.110 of 2011 that there

was no provision in the Recruitment Rules of 1975 for direct recruitment and the provision of direct recruitment was first made in the Recruitment Rules of 2000 and so the appointments of Shri S.C. Das and Smti. S. Chatterjee were illegal, *dehors* the rules and hence were liable to be set aside and quashed.

**9.5.** It is an admitted position that in the Rules of 1975 there was no provision for direct recruitment. In the Rules of 2000 the provision of direct recruitment was introduced. The Rules of 2000 prescribes that there shall be 75% by direct promotion failing which by deputation/absorption and 25% by direct recruitment. The official respondents contended that pursuant to the provisions to the Draft Recruitment Rules which was ultimately finalised as the Rules of 2000 the direct recruitments were made. But it is an admitted position that though the Draft Recruitment Rule contains a provision of 50% direct recruitment but the Rules of 2000 prescribes 25% direct recruitment. However, it is clear that the provision of direct recruitment was there in the final Recruitment Rules of 2000.

**9.6.** The question which fell for consideration as to whether the appointment on the basis of a Draft Recruitment Rules was justified or not.

**9.7.** In their counter affidavit in WP(C) No.248 of 2009, the official respondents stated thus:

*"12. That, in reply to the contentions made in Para-5, I humbly submit that during 1994 the draft RRs were prepared wherein mode of filling the post of AE(CIVIL)/AC, was 50% by promotion and 50% by direct Rectt. and the said RRs were approved by the GOI, and notified on 16.05.2000 vide GSR No.182 vide which the posts would be filled up by 75% promotion, failing which by deputation/absorption and 25% by direct Rectt. At present, according to latest RRs(BSF Engg. Officers Recruitment(Amended) Rules 2007), the post of AE(Civil)/AC would be filled up 66 $\frac{2}{3}$ % by promotion failing which by deputation and 33 $\frac{1}{3}$ % by direct recruitment.*

*....."*

In para 24 of the same counter affidavit the official respondents stated thus:

*"24. That, with reference to the contentions made in Para-18 of the Writ Petition of the petitioner, I humbly submit the reasons for not acceding the request of the petitioner has elaborately been made in the forgoing Para-23 of this Counter Affidavit. As regards the appointment of direct entry personnel(Asstt. Engineer(Civil)/Asstt. Comdt) is concerned, the Deptt. has taken a decision and prepared draft Recruitment Rules in 1994 wherein mode of filling the post of AE(Civil) was proposed to be 50% by promotion and 50% by direct recruitment. The RR was notified in 2000 and further the post restructured during 2003 under which the posts were to be filled as 75% by promotion, failing which by deputation/absorption and 25% by direct recruitment.*

*It is not out of place to mention here that the Hon'ble Supreme Court of India in WP(C) No.146 of 1992 and Civil Appeal No.2127 of 1985 decided on 19.01.1995.*

*(Appellants: RAVI PAUL AND ORS V/S UOI AND ORS)*

*referred Hon'ble Supreme Court decision given in the case of B N NAGARAJAN V/S STATE OF MYSORE AND ORS(MANU/SC/0043/1966) that "in law it was permissible to do so because it is well settled that, it is not obligatory to make rules for recruitment etc. before a service can be constituted or a post created or filled and the Government in exercise of its executive powers can make appointments in absence of rules.....".*

The above statement of the official respondents has not been controverted by the petitioner Shri R.K. Shrivastava in his rejoinder affidavit.

**9.8.** Similarly, the official respondents in their counter affidavit in WP(C) No.90 of 2010 took similar stand of justifying the direct recruitment on the basis of Draft Recruitment Rules and in para 22 of the counter affidavit the official respondents stated thus:

*"22. That with reference to the statement made in Paragraph-17 of the Writ Petition I humbly say that it is pertinent to mention that as per GSR 182 para 4(I)(Border Security Force(Engineering Officers) Recruitment Rules, 2000, notified on 16.05.2000 it has been specifically clarified that the officers holding posts in the Engineering Officers Cadre, immediately before*

*commencement of these Rules on a regular basis, shall be deemed to have been appointed in accordance with the provisions of these rules. Hence, the appointment of all officers, including the Direct Entry Assistant Engineers(Civil)/Assistant Commandant, namely, Shri S.C. Das(respondent No.5) and Smt. Shilpi Chatterjee(respondent No.6) whose names have been made under the said rules. To correct the erroneous notional seniority assigned to the petitioner in the rank of AE(Civil)/AC, the name of the petitioner will have to be brought down at his rightful place in the revised seniority list much below the name of Shri H.K. Chanda(respondent No.4) Shri S.C. Das,(respondent No.5) Smt. Shilpi Chatterjee, (respondent No.6) and Shri Sailendra Singh(respondent No.7) as all will be seniors to the petitioner in terms of their promotion/appointment in the rank of AE(C)/AC in BSF.*

*A copy of the Notification dated 16.05.2000 is enclosed herewith and marked as Annexure-R/13.*

*In this regard it is also pertinent to mention here that the decision given in the cases of "Vimal Kumari V/S. State of Haryana and others [(1998) 4 SCC 114]" and "High Court of Gujarat and another V/S Gujarat Kishan Mazdoor Panchayat and others [(2003) 4 SCC 712]" have been referred to in the case of UOI through Govt. of Pondicherry & Another V/s V. Ramakrishnan & Others in the Appeal(Civil) 6332 of 2005. The relevant operative portions of above referred cases are as under:*

*Vimal Kumari V/S State of Haryana and others [(1998) 4 SCC 114]:*

*"It is, no doubt, open to the Government to regulate the service conditions of the employees for whom the Rules are made, by those Rules even in their*

*"draft stage" provided there is clear intention on the part of the Government to enforce those Rules in the near future Recourse to such Draft Rules is permissible."*

*High Court of Gujarat and another V/s Gujarat Kishan Mazdoor Panchayat and others [(2003) 4 SCC 712]:*

*"It is now trite that draft rules which are made to lie in a nascent state for long time cannot be the basis of making appointment or recommendation. Rules even in their draft stage can be acted upon provided there is a clear intention on the part of the Government to enforce those rules in the near future. "*

**9.9.** The petitioner of WP(C) No.90 of 2010 in his rejoinder affidavit in para 14 stated thus:

*"14. With regard to the statements made in paragraph 22 of the counter affidavit, I repeat and reiterate what I have stated in paragraph 17 of the writ petition. I say that the Rules of 1975 having specified and postulated specific provision for appointment to the post of Assistant Engineer and the appointments of the respondent nos.5 and 6 not being in accordance with the Rules of 1975, made dehors the Rules of 1975, the Union respondents cannot contend that any appointment including those of the respondent nos.5 and 6 were made on regular basis deserving to be considered to be appointed under the rules of 2000. In this respect, I repeat and reiterate what have been stated in paragraph 17 of the writ petition. However I say that the matter being a matter relating to the points of law, the same shall be relief and referred to at the*

*time of hearing. However as regard the reference to Bimal Kumari reported as (1998) 4 SCC 114, I say that the same has no manner of application in the present case nor has the case in High Court of Gujarat and another reported as (2003) 4 SCC 712 any manner of application and the respondents are ill advised about the application of the said decisions in the present case."*

**9.10.** The Supreme Court in the case of **Vimal Kumari v. State of Haryana** reported in **(1998) 4 SCC 114** in para 6 of the judgment has observed:

*"6. The Draft Rules were prepared in 1983 and since then they have not been enforced. It is, no doubt, open to the Government to regulate the service conditions of the employees for whom the Rules are made by those Rules even in their "draft stage" provided there is clear intention on the part of the Government to enforce those Rules in the near future. Recourse to such Draft Rules is permissible only for the interregnum to meet any emergent situation. But if the intention was not to enforce or notify the Rules at all, as is evident in the instant case, recourse to "Draft Rules" cannot be taken. Such Draft Rules cannot be treated to be Rules made under Article 309 of the Constitution and cannot legally exclude the operation of any existing executive or administrative instruction on the subjects covered by the Draft Rules nor can such Draft Rules exclude the jurisdiction of the Government, or for that matter, any other authority, including the appointing authority, from issuing the executive instructions for regulating the*

*conditions of service of the employees working under them”*

**9.11.** In the case of ***High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat*** reported in **(2003) 4 SCC 712**, the Supreme Court relying on ***Vimal Kumari***(*supra*) has observed in para 27 of the judgment thus:

*"27. It is now trite that draft rules which are made to lie in a nascent state for a long time cannot be the basis for making appointment or recommendation. Rules even in their draft stage can be acted upon provided there is a clear intention on the part of the Government to enforce those rules in the near future.(See Vimal Kumari v. State of Haryana : (1998) 4 SCC 114)"*

**9.12.** The Supreme Court has settled the law that a rule in a draft stage can be acted upon provided there is a clear intention on the part of the Government to enforce the rules in near future. In the case at hand, it is an admitted position that in the Rules of 1975 there was no provision of direct recruitment. The provision of direct recruitment was introduced in the Rules of 2000, *i.e.* the Rules approved on 16.05.2000. It is the consistent stand of the official respondents that pursuant to the Draft Recruitment Rules, the direct recruitments were made and the Draft Recruitment Rules was ultimately finalised and notified on 16.05.2000, obviously with certain modifications. So, the ratio of the above two decisions are squarely applicable in the present case.

**9.13.** Learned senior counsel, Mr. Sankar Deb has argued that Shri S.C. Das and Smti. S. Chatterjee were directly recruited, *dehors* the notified rules. The official respondents contended, submits Mr. Deb, that they were appointed pursuant to a Draft Recruitment Rules of 1994 but the Draft Recruitment Rules which is produced by the learned CGC at the time of hearing is of 1996 and so it is not clear as to whether the said Draft Recruitment Rules was ultimately finalised or not. He has contended that the appointment, promotion, etc. should be made pursuant to the recruitment rules framed under Article 309 of the Constitution or under a Statute and since there was no provision of direct recruitment before notification of the Rules of 2000, the appointments of Shri S.C. Das and Smti. S. Chatterjee were wrong and liable to be set aside and quashed.

The official respondents took consistent stand that Shri S.C. Das and Smti. S. Chatterjee were appointed in the year 1997 and 1998 respectively pursuant to the Draft Recruitment Rules which was forwarded to the Ministry of Home Affairs, Government of India for finalization and approval and that the Draft Recruitment Rules was finalised and approved as the Rules of 2000. The Draft Recruitment Rule which has been produced appears to have prepared in the year 1996 but the official respondents in their counter affidavit stated the year as 1994. Such inconsistencies in respect of the year of the Draft Recruitment Rules should not be attached with much importance since the Draft Recruitment Rules

itself is in existence and it is apparently clear that the Draft Recruitment Rule was finalised in the year 2000. In view of the law laid down by the apex Court in **Vimal Kumari**(*supra*) and **Gujarat Kishan Mazdoor Panchayat**(*supra*), I am of considered opinion that the appointments of Shri S.C. Das and Smti. S. Chatterjee as direct recruits to the post of AE(C)/AC suffer from no infirmity and there is no question of setting aside the appointment.

I would further like to refer here Rule 4 of the Rules of 2000 which reads as follows:

*"4. Initial constitution.—(1) Officers holding posts in the Engineering Officers Cadre, immediately before commencement of these Rules on a regular basis, shall be deemed to have been appointed in accordance with the provisions of these rules.*

*(2) The regular and continuous service of officers referred in sub-rule (1) in the respective grades immediately before commencement of these rules shall count for the purpose of probation period, qualifying service for promotion, confirmation and pension in the service:*

*Provided that eligibility length of service for promotions to those appointed directly before commencement of these rules shall count from the date of entry."*

**9.14.** The above provision clearly stipulates that all officers who were holding the post of Engineering Officers Cadre immediately before commencement of the rules shall be deemed to

have appointed according to the provisions of the Rules of 2000 and thereby the Rules has ratified all appointments made prior to the notification of the Rules. Further, there is no allegation that Shri S.C. Das and Smti. S. Chatterjee were not qualified for appointment to the post or that they were not having with requisite prescribed age or that their selections were not fair. It is also apparent from the record that respondent No.4 of WP(C) No.375 of 2006 also contested for the post of AE(C)/AC along with Shri S.C. Das for direct recruitment but he failed and that the petitioner Shri Bhupinderjit, though was a graduate engineer did not contest for direct recruitment. Since the qualification, etc. of Shri Das and Smti. Chatterjee and the selection process were not challenged, their appointment pursuant to the Draft Recruitment Rules cannot be held to be illegal or *void*.

Learned senior counsel, Mr. Sankar Deb while arguing on this point referred the decisions of the apex Court in the case of ***Sant Ram v. State of Rajasthan*** reported in ***AIR 1967 SC 1910*** and in the case of ***Union Territory of Chandigarh v. Dilbagh Singh*** reported in ***(1993) 1 SCC 154*** but I find no relevance of those decisions in the context of these cases.

**9.15.** In view of the discussions made above, I am of considered opinion that the direct recruitment of Shri S.C. Das and Smti. S. Chatterjee was valid and there is no question of interfering with their recruitment.

**10.            *WHETHER THE PROMOTION OF SHRI BHUPINDERJIT(RESPONDENT NO.5 OF WP(C) NO.375 OF 2006) WHO IS ALSO THE PETITIONER OF WP(C) NO.90 OF 2010, TO THE POST OF AE(C)/AC BY ORDER DATED 23.04.2004 W.E.F. 06.11.1996 WAS JUSTIFIED?***

**10.1.**        Shri S.C. Das, the petitioner of WP(C) NO.375 of 2006 challenged the appointment on promotion of Shri Bhupinderjit (respondent No.5) and Shri Balbir Singh Sandhu(respondent No.4) of that writ petition with retrospective effect. Shri Balbir Singh Sandhu did not appear and did not contest the writ petition. It is an admitted position that both Shri Balbir Singh Sandhu and Shri Bhupinderjit[respondent Nos.4 and 5 of WP(C) No.375 of 2006] were initially appointed as Sub-Inspector/Junior Engineer(General Duty) and thereafter they were promoted to the post of Inspector(G.D.) and Shri Bhupinderjit was promoted to the post of AE(C)/AC by an order dated 23.04.2004 issued by the official respondents pursuant to the judgment and order dated 28.10.2003 passed by Punjab & Haryana High Court in Civil Writ Petition No.10235 of 2003.

**10.2.**        Let us first see what was the order passed by the Punjab & Haryana High Court in the case of Shri Bhupinderjit. In his writ petition Shri Bhupinderjit produced a copy of order dated

28.10.2003 passed by the Division of the Punjab & Haryana High Court which reads as follows:

"C.W.P. No.10235 of 2003"

*Present : Mr. I.D. Singla, Advocate  
For the petitioner.  
Mr. S.K. Sharma, Additional Central  
Government Standing Counsel  
For the respondent-UOI.*

*On 10.7.2003 this Court had passed the following order:-*

*Learned counsel submits that despite the decision of this Court rendered in C.W.P. No.15524 of 1997, the petitioner is not being granted the necessary relief as the respondents were insisting that the petitioner should also get a similar order.*

*Notice of motion for 31.7.2003.*

*Notice for stay also for the same date.*

*The petitioner is directed to affect service to the respondents through the Sr. Standing counsel of the Union of India, Mr. R.S. Rai, Advocate. the petitioner is directed to supply the requisite number of copies of the writ petition to the Office of Mr. Rai today itself.*

*Today, counsel for the respondents has appeared and states that the matter is squarely covered by the decision noted above.*

*In view of the above, petition is allowed in the same terms as C.W.P. No.15524 of 1997.*

October 28, 2003      Sd/- S.S. Niggar, Judge  
Sd/- S.S. Grewal, Judge"

**10.3.** It appears that the writ petition of the petitioner was disposed of in the same term as CWP No.15524 of 1997, i.e. the writ petition filed by Rakesh Kumar Kanda and Others in the same High Court. A copy of that judgment dated 19.12.2002 has been produced by Shri Bhupinderjit in his writ petition as *Annexure-P3* and the operative part of that judgment reads as follows:

“.....

*During the course of hearing, we specifically required the learned counsel for the respondents to inform us whether the decisions rendered by the Gauhati High Court and the Rajasthan High Court, referred to above, had been assailed/contested by the Border Security Force. We were informed that both the aforesaid decisions had been accepted by the respondents and have been duly implemented, inasmuch as the claims of the petitioners therein were considered for onward promotion in the Engineering Wing i.e. in the Engineering cadre. In view of the aforesaid factual position, there remains no doubt that the proposition of law as laid down by the Gauhati High Court in Sri Bibhu Bhuven Shome’s case and by the Rajasthan High Court in M.K. Quareshi’s case has attained finality and has also been accepted by the respondents. In view of the above, we are satisfied that the present controversy is squarely covered by the decisions rendered in the two cases, referred to above. At the time of their(petitioners) recruitment it was ensured that the petitioners possess the qualifications prescribed for the post of Junior Engineer(civil), for the said purpose, the advertisement issued by the Border Security Force inviting application for the post of Sub-*

*Inspector(Junior Engineer) Civil, required the candidates to possess the qualifications of Matriculation and three years diploma in Civil Engineering. The aforesaid qualifications were clearly irrelevant for appointment to the Executive Wing i.e. in the General Duty cadre. The petitioners ever since their induction into the service have rendered duties uninterruptedly in the Engineering Cadre of the Border Security Force as Junior Engineer(Civil). In such circumstances, they are liable to be given the benefit of service rendered by them as Junior Engineer(Civil) including the right of onward promotion in terms of the 1975 Recruitment Rules. Since the petitioners have rendered more than 8 years of service as Junior Engineer(Civil), they are all eligible for consideration for promotion to the post of Assistant Engineer(Civil) under the aforesaid Rules. The respondents are, therefore, directed to consider the claim of the petitioners for promotion to the post of Assistant Engineer(Civil) under the said Rules.*

*Allowed in the aforesaid terms.*

*Sd/- J.S. Khehar, Judge  
Sd/- Swatanter Kumar, Judge”*

**10.4.** It is abundantly clear from the above judgment/order of the Punjab & Haryana High Court that direction was given to consider the claim of the petitioner for promotion to the post of AE(C)/AC under the Rules of 1975 and there was no direction at all to give promotion with retrospective effect from a particular date. It is an admitted position that pursuant to the above order of the High Court the official respondents promoted Shri Bhupinderjit to the

post of AE(C)/AC by order dated 23.04.2004(*Annexure-P4* to WP(C) No.90 of 2010) with notional seniority w.e.f. 06.11.1996.

**10.5.** The official respondents now has come up with a definite stand that the order of promotion of Shri Bhupinderjit, with retrospective effect from 06.11.1996 was altogether wrong since there was other engineers in the service who were senior to Shri Bhupinderjit and they have also taken the stand that Shri S.C. Das and Smti. S. Chatterjee, both being direct recruits of the year 1997 and 1998 respectively, were senior to Shri Bhupinderjit and that Bhupinderjit was entitled to get retrospective seniority only w.e.f. 2002 and not before.

**10.6.** The stand of Shri Bhupinderjit as respondent No.5 in WP(C) No.375 of 2006 is that he was promoted to the post of AE(C)/AC pursuant to the order passed by the Punjab & Haryana High Court and the retrospective effect of the promotion was given considering the fact that his juniors were promoted w.e.f. 06.11.1996. The official respondents in WP(C) No.90 of 2010 has taken a clear stand that after promotion of Shri Bhupinderjit with retrospective effect and subsequent thereto a comprehensive exercise to absorb all eligible persons to the engineering set up was taken up and at that time it was found that several persons in the engineering set up who were senior to Shri Bhupinderjit were left out and to regularize the services of all those persons, namely Jitendra Chikara, A.K. Datta, J.L. Raina, M.L. Doa, etc. it was found

that giving of seniority with retrospective effect from 06.11.1996 to Shri Bhupinderjit was unjustified and was not tenable and that his seniority was bound to be rolled down to accommodate his seniors and accordingly steps were taken.

**10.7.** It is very much clear that in the order of the High Court there was no direction to give promotion to Shri Bhupinderjit with retrospective effect from 06.11.1996. The official respondents stated that it was a wrong committed by them which was not permissible and therefore they have taken steps for correction of the wrong and to rectify the seniority position. They have also taken the stand that Shri Bhupinderjit in view of his wrong seniority was given promotion to the post of Executive Engineer(Civil)/Deputy Commandant [for short, EE(C)/DC] and that was also not correct since Shri Bhupinderjit was not entitled to get seniority *w.e.f.* 06.11.1996.

**10.8.** Every wrong has a remedy and a wrong cannot be allowed to perpetuate. If a wrong is found to have committed by any authority or person the authority or the person has every right to correct the wrong with retrospective effect. It is apparently clear that there was no direction of the High Court to give Shri Bhupinderjit promotion *w.e.f.* 06.11.1996. It was an administrative decision taken by the official respondents and the official respondents have come out with a clear stand that the promotion of Shri Bhupinderjit *w.e.f.* 06.11.1996 to the post of AE(C)/AC was not

correct and that he is entitled to get the seniority *w.e.f.* 2002. Shri Bhupinderjit neither in his counter affidavit filed in WP(C) 375 of 2006 nor in WP(C) No.90 of 2010 could show any material to justify his promotion to the post of AE(C)/AC *w.e.f.* 06.11.1996. I am, therefore of considered opinion that the promotion of Shri Bhupinderjit to the post of AE(C)/AC by order dated 23.04.2004 given by the official respondents (*Annexure-P4* to WP(C) No.90 of 2010) with retrospective effect from 06.11.1996 was not justified. However, interference with the said promotion order is not required since the official respondents have already been taken steps for correction of the seniority position of Shri Bhupinderjit in the post of AE(C)/AC as well as in respect of his promotion to the post of EE(C)/DC.

**11.            *WHETHER SRI R.K. SHRIVASTAVA, PETITIONER OF WP(C) NO.248 OF 2009 AND WP(C) NO.110 OF 2011 WAS ENTITLED TO BE APPOINTED AS AE(C)/AC WITH RETROSPECTIVE EFFECT W.E.F. 11.02.1995 AND WHETHER HIS APPOINTMENT TO THE POST W.E.F. 16.05.2000 WAS LIABLE TO BE MODIFIED?***

**11.1.**        Shri R.K. Shrivastava filed two consecutive writ petitions, *i.e.* WP(C) No.248 of 2009 and WP(C) No.110 of 2011 seeking almost identical relief. Whether such consecutive writ petitions were justified or not, we shall deal with later on. Let us now see whether he was entitled to get retrospective effect of his

promotion w.e.f. 11.02.1995 in lieu of 16.05.2000 which has been given to him.

**11.2.** It is an admitted position that Shri R.K. Shrivastava was initially appointed as Sub-Inspector/Junior Engineer(General Duty) on 25.10.1985 and thereafter he was promoted to the post of Inspector(GD) and it is the claim of Shri Shrivastava in his writ petitions that pursuant to order dated 27.08.2002 passed by Delhi High Court in Civil Writ Petition No.667 of 2001 he was promoted to the post of AE(C)/AC by the official respondents by order dated 25.11.2002 w.e.f. 16.05.2000 and it is his claim that he was entitled to get promotion with retrospective effect w.e.f. 11.02.1995.

**11.3.** Let us, therefore, first see the judgment/order of Delhi High Court in Civil Writ Petition No.667 of 2001, a copy of which has been annexed by the petitioner as *Annexure-P5* to WP(C) No.248 of 2009. The relevant order reads as follows:

*"The petitioner in this petition has inter alia prayed for issuance of appropriate writ on the respondents directing them to absorb him permanently as an Asstt. Commandant/Asstt. Engineer in the Engineering cadre. It is not in dispute that the petitioner herein pursuant to an advertisement issued in daily news paper "Swadesh" whereunder the applications were invited for filling up vacancies to the post of temporary SI/Jr. Engineer(Civil). He was appointed Sub-Inspector in the general category of the Border Security Force. He was subsequently promoted*

*and now holds the rank of Inspector/Jr. Engineer(Subedar) with effect from 28-02-1992.*

*It is not in dispute that the respondents have framed rules known as Border Security Force(Engineering Officers) Recruitment Rules, 2000. It is also not in dispute that thereafter the case of the petitioner, and several other persons similarly situated, was taken up for his absorption in the Engineering cadre. The contention of the respondents, however, is that in view of order of stay passed by the Jammu and Kashmir High Court, further steps in this behalf could not be taken. However, the learned counsel appearing on behalf of the petitioner placed before us a judgment and order dated 20<sup>th</sup> July, 2002 passed by a learned Single Judge of the Jammu and Kashmir High Court SWP No.2281/2000 title L. Aravind S/ Sh. Lakshmi Narasimha Vs. Union of India and Others wherein following an earlier judgment of the Rajasthan High Court it has been directed:-*

*"I am of the opinion, that the decision given by the Rajasthan High Court would be attracted to the facts of this case. This petition is accordingly allowed. The petitioner is held entitled to the benefit of service rendered by him with effect from 05.03.1986.*

*As a consequence of the decision as given in writ petition SWP No.1569/2000, the grievance as projected in SWP No.2281/2000 has to be given a fresh look, as some persons were promoted ignoring the claims of the petitioner qua service rendered by him from 05.03.1986. Therefore, the issue of promotion would have been considered de novo. Both the writ petitions are disposed of*

*accordingly. Let the whole issue considered in the light of what has been stated above. This would be done within a period of three months from the date a copy of this order is made available by the petitioner to the respondents. In view of the fact that the main writ petitions have been disposed of, the connected CMPs shall also stand disposed of."*

*In view of the aforementioned stand taken by the parties, we are of the opinion that in the interest of justice the respondents are directed to consider the case of the petitioner in the light of the aforementioned judgments and grant him appropriate relief at an early date and not later than 12 weeks from the communication of this order. It is directed accordingly.*

*The writ petition is disposed of."*

**11.4.** A bare reading of the above order clearly stipulates that there was no direction to give promotion to Shri Shrivastava with retrospective effect from 11.02.1995. It was simply ordered to consider his case in the light of the previous judgment passed by the Jammu & Kashmir High Court and the Rajasthan High Court. The official respondents pursuant to the above order of the High Court absorbed Shri Shrivastava in the post of AE(C)/AC by order dated 25.11.2002(*Annexure-P9* to WP(C) No.248 of 2009 with retrospective effect from 16.05.2000, *i.e.* from the date of coming into effect of the Recruitment Rules of 2000. Order of absorption dated 25.11.2002 reads as follows:-

"N.45011/43/02/STAFF(E)/BSF/12121-29  
Government of India  
Ministry of Home Affairs  
Dte. General Border Security Force  
(Staff Section)  
Block No.10 CGO Complex  
Lodhi Road, New Delhi-03  
Dated, the 25<sup>th</sup> Nov'02

ORDER

*In compliance of Hon'ble High Court of Delhi Judgement dated 27/08/02 in WP No.667/2001, a Departmental Screening Committee was held at HQ DG BSF New Delhi on 18 Nov'02 for consideration of the case of No.85002023 Sub(GD) R K Srivastava who is presently on deputation as AE(Civil)/AC for permanent absorption in the grade of AE(Civil)/AC in BSF Engg Cadre w.e.f. 16/05/2000 i.e. from the date of notification of Recruitment Rules for the post of AE(Civil)/AC(combatised) in which the provision of absorption has been provided. The DSC found him 'Fit' for permanent absorption to the grade of AE(Civil)/AC in BSF Engg Cadre.*

*2. In consequence of his having been adjudged 'Fit' for permanent absorption by the DSC, the competent authority is pleased to approve for permanent absorption of No.85002023 Sub(GD) R K Srivastava presently on deputation as AE(Civil)/AC at SHQ BSF Bikaner to the grade of AE(Civil)/AC in BSF Engg Cadre notionally w.e.f. 16/05/2000 i.e. from the date of notification of RRs for the post of AE(Civil)/AC (combatised) in the pay scale of Rs.6500-10500 subject to the final decision in the SWP No.802/2002 filed by Junior Engineer(Electrical) Senior Grade/Inspector K M Muralidharan and Others V/S UOI and Others which is subjudice before Hon'ble High Court at Jammu. He will not be entitled to any arrears of pay and allowances.*

*3. He will maintain his inter-se-seniority in the rank of AE(Civil)/AC below the name of Smt. Shilpi Chattarjee AE(Civ)/AC and above the name of Shri Shailender Singh, AE(Civil)/AC.*

*4. He will take over charge of AE(Civil)/AC on his permanent absorption at his present place of posting and charge assumption report should be submitted to this HQ.*

*-sd/-*

*( R K Fauzdar)*

*COMMANDANT(STAFF)"*

**11.5.** Under the Rules of 1975 there was no scope of absorption to the post of Assistant Engineer(Civil). The Rules of 2000 prescribed the provision that 75% post of AE(C)/AC shall be filled up by promotion failing which by deputation/absorption. The Rules of 2000 came into force with effect from 16.05.2000. The official respondents in their counter affidavit took a clear stand that prior to coming into force of the Rules of 2000 there was no scope for absorption and since the Rules of 2000 came into force with effect from 16.05.2000, Shri R.K. Shrivastava was absorbed with retrospective effect from 16.05.2000 and not prior to that. I find total justification in the stand taken by the official respondents. There was no direction of the High Court to give him promotion with retrospective effect from 11.02.1995. Shri Shrivastava in his writ petition could not come out with any definite material to show that he was entitled to be absorbed *w.e.f.* 11.02.1995. In the absence of any such cogent material to show that he was entitled to be absorbed *w.e.f.* 11.02.1995 in the post of AE(C)/AC, his claim for a

direction to give retrospective effect on his promotion with effect from that date of 1995 is not tenable and hence I have no hesitation to arrive at a conclusion that Shri Shrivastava was not entitled to be promoted to the post of AE(C)/AC w.e.f. 11.02.1995 and that his absorption to the post w.e.f. 16.05.2000 was justified.

**12. WHAT SHOULD BE THE SENIORITY POSITION OF THE PETITIONERS AND PRIVATE RESPONDENTS IN THE BATCH OF WRIT PETITIONS, TO THE POST OF AE(C)/AC IN THE CIVIL ENGINEERING CADRE OF BSF IN VIEW OF CONFLICTING CLAIM?**

**12.1.** Shri S.C. Das, petitioner of WP(C) No.375 of 2006 challenged the seniority list of AE(C)/AC dated 25.01.2006 (*Annexure-6* to that writ petition) for the post of AE(C)/AC wherein Shri Das has been shown at Sl. No.13, Smti. S. Chatterjee at Sl. No.14, Shri R.K. Shrivastava at Sl. No.15 and Shri Bhupinderjit at Sl. No.9. Shri Bhupinderjit by filing WP(C) No.90 of 2010 challenged the draft seniority list dated 07.10.2008 which is marked as *Annexure-P7* to that writ petition. Shri R.K. Shrivastava by filing WP(C) No.110 of 2011 also challenged the same draft seniority list dated 07.10.2008 which is marked as *Annexure-P9* to that writ petition. Though the draft seniority list dated 07.10.2008 was published during pendency of WP(C) No.375 of 2006, Sri S.C. Das, the petitioner did not challenge the said draft seniority list.

**12.2.** Besides praying for setting aside order of promotion to the post of AE(C)/AC of respondent Nos.4 and 5, the petitioner of

WP(C) No.375 of 2006, Shri S.C. Das, prayed for separate seniority list for the promotees and for the direct recruits. It is an undisputed position that the recruitment, promotion and seniority, etc. of the petitioners and the private respondents of all the writ petitions are liable to be dealt with under the provisions of the Rules of 2000 which prescribed quota for promotion and direct recruitment. The Draft Recruitment Rules prescribed quota for promotee and direct recruit in the equal percentage, *i.e.* 50:50 but the Rules of 2000 prescribed 75% by promotion failing which by deputation/absorption and 25% by direct recruitment. It is a settled law that when recruitment is to be made from two or more sources the statutory provisions or administrative instruction governing such recruitment may fix quota in respect of each of the sources according to which such recruitment is to take place. It is an admitted position that in the cadre of AE(C)/AC the Rule prescribes recruitment at the rate of 75% by promotion/ deputation/ absorption and 25% by direct recruitment. While quota rule is prescribed by the Service Rules, the recruitee of one source cannot occupy the position meant for the recruitee of other source. It is strictly held by the apex Court that the quota rule should be strictly followed and if it was violated in favour of a particular group by recruitment in excess of quota, than the excess recruits could not take advantage of the infraction by claiming seniority on the basis of their earlier entry into service compared to those of the denied group whose entry was deferred by such illegal usurpation.

**12.3.** In the case of ***V.B. Badami, etc. v. State of Mysore & Ors.*** reported in ***(1976) 2 SCC 901***, the Supreme Court observed that in working out the quota rule the following principles are generally followed. First, where rules prescribe quota between direct recruits and promotees, confirmation or substantive appointment can only be in respect of clear vacancies in the permanent strength of the cadre. Second, confirmed persons are senior to those who are officiating. Third, as between person appointed in officiating capacity, seniority is to be counted on the length of continuous service. Fourth, direct recruitment is possible only by competitive examination which is the prescribed procedure under the rules. In promotional vacancies, the promotion is either by selection or on the principle of seniority-cum merit. A promotion could be made in respect of a temporary post for a specified period but a direct recruitment has generally to be made only in respect of clear permanent vacancy either existing or anticipated to arise at or about the period of probation is expected to be completed. Fifth, if promotions are made to vacancies in excess of the promotional quota, the promotions may not be totally illegal but would be irregular. The promotees cannot claim any right to hold the promotional posts unless the vacancies fall within their quota. If the promotees occupy any vacancies which are within the quota of direct recruits, when the direct recruitment takes place, the direct recruits will occupy the vacancies within their quota. Promotees who were occupying the vacancies within the quota of direct recruits will either be reverted or they will be absorbed in the

vacancies within their quota in the facts and circumstance of the case. The important principle is that as long as the quota rule remains neither promotees can be allotted to any of the substantive vacancies of the quota of direct recruits nor direct recruits can be allotted to promotional vacancies.

In the case of ***O.P. Singla v. Union of India*** reported in ***AIR 1984 SC 1595***, the Supreme Court observed that whenever the rules provide for recruitment to a Service from different sources, there is no inherent infirmity in prescribing a quota for appointment of persons drawn from those sources and in working out the rule of quota by rotating the vacancies as between them in a settled proportion.

In the case of ***Bishan Sarup Gupta v. Union of India*** reported in ***AIR 1972 SC 2627***, the Supreme Court observed that so long as the quotas remain, one group cannot claim the quota fixed for another group either on the ground that the quotas are not filled up or on the ground that because there has been a number in excess of quota the same should be absorbed depriving the other group of quota.

The Court further held, *"If there were promotions in any year in excess of the quota, those promotions were merely invalid for that year but they were not invalid for all time. They could be regularized by being absorbed in the quota for the later years. That*

*is the reason why this court advisedly used the expression "and onwards" just to enable the Government to push down excess promotions to later years so that these promotions can be absorbed in the lawful quota for those years."*

In the case of **K. Siva Reddy v. State of Andhra Pradesh** reported in **1988(Supp) SCC 225**, the Supreme Court observed that seniority rules cannot not be allowed to override the quota rule of recruitment to put direct recruits in disadvantageous position and promotees in excess of the quota cannot claim seniority over direct recruits appointed within the quota on regular basis.

The Gauhati High Court in the case of **Tripura Bar Association v. State of Tripura** reported in **(1992) 1 GLR 94**, while deciding a case relating to Tripura Judicial Service has observed that quota rule has to be strictly followed and enforced. Quota rule is linked up with the seniority rules. In the case of filling up vacancies in the service from two sources on the basis of quota, fixation of *inter se seniority* in the gradation list has to be worked out on the basis of quota. Date of appointment appearing in Rule 3 of the 'Seniority Rules' should be the date of substantive appointment as per provision of Rule 11 of Service Rules. If the promotions are made to vacancies in Gr-I in excess of the promotional quota, that is, in excess of 75% of the permanent authorized strength, such promotees cannot have right to hold the

promotional post unless the vacancies fall within their quota and if the promotees occupy any vacancies which are within the quota of direct recruits, when direct recruitment takes place, the direct recruits will occupy the vacancies within their quota and the promotees who were occupying the vacancies within the quota of direct recruits, will either be reverted or will be absorbed in the vacancies that subsequently arise in their quota.

**12.4.** It is an admitted position that Shri S.C. Das, the petitioner of WP(C) No.375 of 2006 and Smti. S. Chatterjee, respondent No.6 of WP(C) No.248 of 2009 and WP(C) No.90 of 2010 were direct recruits of the year 1997 and 1998 respectively as per the provisions of the Draft Recruitment Rules. According to the official respondents, the Draft Recruitment Rules under which Shri S.C. Das and Smti. S. Chatterjee were appointed was finalised/approved in the year 2000 with modifications and the Rules of 2000 prescribed 75% by promotion/absorption/deputation and 25% by direct recruitment. Rule 4 of the Rules of 2000 has prescribed that the officers holding posts in the engineering officers' cadre immediately before commencement of that rule on a regular basis shall be deemed to have appointed in accordance with the provisions of that rule. So Shri Das and Smti. Chatterjee who were appointed on a regular basis as per the draft recruitment rules was treated as a member of the regular cadre under the Rules of 2000. It is an admitted position that Shri R.K. Shrivastava and Shri Bhupinderjit Singh were promoted to the post of AE(C)/AC

pursuant to the order passed by the High Court of Delhi and the High Court of Punjab & Haryana respectively after the Rules of 2000 came into force. So, the services of all the promotees and direct recruits were in the cadre of AE(C)/AC were bound to be regularized in accordance with the Rules of 2000 fixing the quota of 75% for promotees and 25% by direct recruitment. There is no legal compulsion that separate seniority rule has to be maintained for the direct recruits and promotees. If the rule prescribes recruitment from different sources, the seniority of the members of the cadre shall be maintained according to the quota prescribed under the rule. The prayer of the petitioner of WP(C) No.375 of 2006 seeking separate seniority list for direct recruits, in my considered opinion is not a legal requirement as per the rules and therefore is not tenable. His seniority according to his quota should be maintained by the respondents keeping in mind the law settled by the apex Court that the direct recruits and promotees shall be absorbed as against the quota meant for the recruitees of the particular source.

**12.5.** The official respondents in WP(C) No.90 of 2010 also produced a copy of draft seniority list dated 07.10.2008 wherein Shri S.C. Das has been shown at Sl. No.9, Shri R.K. Shrivastava has been shown at Sl. No.11, Smti. S. Chatterjee has been shown at Sl. No.14 and Shri Bhupinderjit has been shown at Sl. No.17. The content of letter dated 07.10.2008 under which the draft seniority list of AE(C)/AC of the Civil Engineering Cadre was forwarded to all Frontiers is very relevant for consideration which reads as follows:

"CONFIDENTIAL"

NO.45011/83/06/Staff(E)/BSF/359-428

Government of India

Ministry of Home Affairs

Directorate General of Border Security Force

(Personnel Directorate-Staff Section)

Block No.10, 7<sup>th</sup> Floor

CGO Complex, Lodhi Road,

New Delhi-110003

Dated, the 07 Oct'2008

To

All Frontier HQrs/

DIG HQrs/Trg Instns/DIG HQ FHQ

25 BN BSF

SUBJECT:- FORWARDING OF TENTATIVE SENIORITY

LIST OF CIVIL ENGINEERING CADRE IN BSF

Refer this office letter No.45011/83/2006/Staff(E)/BSF11760-11820 and letter No.11822-82 dated 15<sup>th</sup> Oct' 2007.

2. To clear complication and anomalies prevailing in the Civil Engg set up of BSF and to clear number of litigation proceedings initiated by various personnel of Engg set up, a holistic view was taken by the Department and accordingly a Board of Officers was detailed to prepare tentative Inter-se-Seniority of all personnel of Engg Set up. The Board of Officers considered following parameters while recommending said tentative inter-se-seniority:-

(a) Inter-se-seniority in the rank of SI/JE(GD), SI/JE(Civil) and AE(Civil)/AC may be fixed based on their initial date of appointment in their respective ranks/grade.

*(b) Promotion in engineering cadre even when granted after reconsideration on court rulings should be reviewed depending upon the availability of vacancies in a particular rank/grade. Because many of these candidates were given seniority from retrospective effect without availability of vacancy as on that date.*

*(c) In some cases, seniority in engineering cadre was given from the date of absorption in the Engineering cadre even when these personnel were appointed as SI/JE(GD) and continued to work as Junior Engineers. In their cases, inter-se-seniority should be re-fixed based on their initial date of appointment as SI/JE(GD).*

*(d) x x x x x x*

*(e) Personnel appointed on the basis of draft recruitment rules should be deemed to have been appointed under the same rules and their date of appointment should not be re-fixed.*

*(f) The candidates who have given conditional options may also be considered to be included in the inter-se-seniority and may be considered for the promotion/absorption in appropriate grade at their own turn.*

*3. The Board Proceeding duly approved by the Competent Authority was forwarded to MHA for their concurrence. The Board Proceeding has since been received duly approved by MHA.*

*4. In accordance with duly approved recommendation of the Board of Officers, proposed tentative inter-se-seniority in respect of all Engg Personnel(Civil Cadre) is forwarded for circulation of same amongst all affected personnel of Engg Set up(Civil Cadre) posted in your Frontier. It may be ensured that a token of receipt regarding their having*

*seen the said inter-se-seniority be obtained from each individual of Engg Set up of your Frontier and a copy of same be forwarded to this headquarter collectively.*

*5. Representation if any against tentative inter-se-seniority may also be forwarded, duly compiled. Complete process of circulating and forwarding of representation if any from stake holders of Engg Cadre may be completed within next 02 months from the date of receipt of above tentative inter-se-seniority. Wide publicity may be given to all concerned and it may also be apprised to each person of Engg branch that no representation against tentative inter-se-seniority beyond 15 Dec 2008 will be entertained.*

*-sd-*

*(EAPEN P V)*

*COMMANDANT(STAFF)*

*Encl:- As above*

*Copy to :*

- 1. Engg. Branch FHQ BSF*
- 2. Pers-Recruitment*
- 3. Guard File."*

**12.6.** Shri Bhupinderjit earlier by filing WP(C) No.379 of 2009 challenged that draft seniority list dated 07.10.2008 and that writ petition was disposed of by judgment dated 07.12.2009 directing the official respondents to dispose the representation of Shri Bhupinderjit submitted against the said draft seniority list as well as his representation dated 26.11.2008 and the official respondents disposed the representation by a speaking order dated 18.01.2010. By filing WP(C) No.90 of 2010 Shri Bhupinderjit in his writ petition annexed a copy of the said speaking order dated 18.01.2010 which

has been marked as *Annexure-P11* to that writ petition and the official respondents also annexed a copy of the same in the said writ petition marked as *Annexure-R12* which is a detailed order in 13 pages wherein the Director General of BSF has responded to the claim of Shri Bhupinderjit saying that the claim of Shri Bhupinderjit that he is senior to Shri S.C. Das and Smti. S. Chatterjee as well as the respondent Nos.4 and 7 of WP(C) No.90 of 2010 was not justified and hence his representation was rejected being *devoid* of merit.

**12.7.** The official respondents came out clearly contending that Shri Bhupinderjit was given promotion with retrospective effect from 06.11.1996 wrongly and that wrong was liable to be rectified. There was no justification or logic for giving Shri Bhupinderjit retrospective effect of promotion *w.e.f.* 06.11.1996. It is clearly brought on record by the official respondents that there were other seniors than that of Shri Bhupinderjit in the service in the same rank while Shri Bhupinderjit was promoted to the post of AE(C)/AC after the Punjab & Haryana High Court passed the order. The official respondents contended that the other similarly situated persons should not have been deprived since they also filed representations and an order issued by the official respondents asking for option of all those in the cadre regarding their absorption in the of AE(C)/AC and while absorbing those persons who were senior to Shri Bhupinderjit it was found that the seniority position of Shri Bhupinderjit was bound to bring down to that of his seniors.

The official respondents have assigned reasons that Shri Bhupinderjit was actually entitled to get promotion with retrospective effect from 24.12..2002 and not from 06.11.1996. Since there was anomaly and number of cases regarding seniority of the persons in the post of AE(C)/AC, the BSF authority constituted a Board of Officers to examine the whole issue about the seniority position of the persons in the cadre of Civil Engineering set up of BSF and after examining all aspects the Board of Officers prepared a seniority list which has been circulated by letter dated 07.10.2008 and all the incumbents were asked to submit their representation in respect of the seniority position shown in the tentative seniority list. Shri Bhupinderjit filed representation and the official respondents received altogether 22(twenty two) representations of various incumbents in the cadre and thereafter the official respondents passed another order dated 02.03.2009(*Annexure-R7* to the counter affidavit of the official respondents in WP(C) No.90 of 2010) constituting a Board of Officers to examine the draft seniority list dated 07.10.2008 as well as the representations received from various stakeholders. That order dated 02.03.2009 issued by DIG of BSF reads as follows:

*"NO.45011/83/2006/Staff(E)/BSF/2712-16*

*Government of India*

*Ministry of Home Affairs*

*Directorate General of Border Security Force*

*(Personnel Directorate-Staff Section)*

*Block No.10, 7<sup>th</sup> Floor*

*CGO Complex, Lodhi Road,*

New Delhi-110003

Dated, the 2 March 2009

//ORDER//

*A Board of Officers consisting of following Officers is detailed to consider the representation received from the Stake holders/members of BSF Engg set up against the tentative inter-se-seniority list of Engg(Civil) cadre circulated vide Pers Dte(Staff Sec) L.No.359-428 dated 07-10-08.*

*Shri Naresh Gaur : Chairman  
Inspector General(Adm), FHQ*

*Shri Prithvi Raj, IPS : Member  
Inspector General, BSF Shillong*

*Shri M S Malhi : Member  
DIG(TRG), FHQ*

*Shri Kuldip Saini : Member  
LO Gde-I(D&L), FHQ*

*2. The Board shall consider the issues raised in the representations(enclosed) and make suitable revision in the tentative inter-se-seniority list. While considering the representations referred ibid, the following points should be kept in view:-*

*(i) In the year 2003 & 2004 while implementing the Court orders, number of Junior Engineers recruited as SI/JE(GD) were promoted to the post of AE(Civil) with notional seniority without availability of clear pro-rate vacancies in that rank.*

*(ii) Notional seniority given from retrospective effect should be based on availability of clear vacancies. In the absence of clear vacancies, the promotions given from retrospective effect may*

*adversely affect the career progression of cadre officers, who are already in service.*

3. *Other Parameters and terms of reference for the Board of Officers will be as under:-*

*(a) Parameters for fixation of seniority of Engg(Civil) Cadre of Engg set up mentioned in the initial order No.1024-27 dated 18 Jan 2008 for fixation of tentative inter-se-seniority will continue to be the basis(said order enclosed).*

*(b) While undertaking revision of notional seniority/inter-se-seniority, the board will consider the availability of clear cut vacancies against specific pro-rata quota of promotes, deputationist and Direct entry.*

*(c) Judgments of Apex Court/High Courts having bearing on the current issue of seniority in Engg(Civil) set up of BSF will be duly considered.*

*(d) Details of sanctioned posts of AE(Civil)/AC, Inspector/JE(Civil) to be considered while considering review of tentative inter-se-seniority.*

*(e) Year wise details of AE(Civil)/AC promoted on regular basis to be given consideration.*

*(f) The BSF Engineering Recruitment Rules from 1975 onwards to be followed.*

*(g) Any other aspect considered relevant to determine the issue of inter-se-seniority.*

4. *While carrying out the above exercise and revising the inter-se-seniority, sufficient reasons, in support of the conclusions/findings arrived at, shall be assigned by the Board.*

5. *The proceedings of the Board, duly completed in all respects, alongwith revised inter-se-seniority, be submitted to Pers Dte(Staff Section) latest by 6<sup>th</sup> April 2009. For any assistant, details or documents, Shri*

*Eapen P V, Commandant(Staff), FHQ may be approached by the Board.*

*6. This has the approval of DG BSF.*

*-sd-*

*(BALBIR SINGH)*

*DIG(PERS)*

*Distributions:-*

- 1. Shri Naresh Gaur, IG(Adm), FHQ*
- 2. Shri Prithvi Raj, IPS, IG BSF Shillong*
- 3. Shri M S Malhi, DIG(Trg), FHQ*
- 4. Shri Kuldip Saini, LO Gde-I/Comdt(D&L), FHQ*
- 5. Shri Eapen P V, Commandant(Staff), FHQ*
- 6. File."*

**12.8.** It is contended by the official respondents that the Board of Officers of the BSF examined the draft seniority list dated 07.10.2008 and all the representations of the members of the cadre and thereafter they finalised the seniority list and it was forwarded to the Union of India for approval.

**12.9.** In WP(C) No.110 of 2011, the official respondents by filing an additional affidavit-in-opposition brought on record the final seniority list of AE(C)/AC dated 21.02.2012 which has been marked as *Annexure-R12* to that additional affidavit-in-opposition of the official respondents in WP(C) No.110 of 2011. The content of that letter containing final seniority list reads as follows:

*"NO.45011/83/2010/Staff(E)/BSF/3022-3300*

*Government of India*

*Ministry of Home Affairs*

*Dte. General of Border Security Force*

*(Pers Dte : Staff Section)*

*Block No.10, CGO Complex,  
Lodhi Road, New Delhi-03.*

*Dated, the 21<sup>st</sup> Feb 2012*

*To*

*SDG(East and West),  
All Frontier HQrs/Sector HQrs  
All Trg Institutions*

*Pers/Confd Dte FHQ*

*Engg Br, FHQ.*

*SUB:-      CIRCULATION OF REVISED COMBINED  
INTER-SE-SENIORITY LIST OF CIVIL  
ENGINEERS OF BSF CIVIL ENGG SETUP*

*In supersession of all previous seniority list of BSF Civil Engineers, I have been directed to forward the seniority list of Civil Engineers of BSF Civil Engineering Setup in the rank of Sub Inspector/Junior Engineer(Civil), based on Revised Combined Inter-se-Seniority List which has been approved by MHA, as per Appendix—'A' by considering their initial date of appointment in the rank of Sub Inspector/Junior engineer(Civil) irrespective of their cadre(BSF Civil Engineering Setup/Executive(GD) Cadre in which they were enrolled.*

- 2. Further as directed by Competent Authority, the seniority list in question be shown to all stake holders and a certificate may be obtained from each individual and their signatures be obtained as a token of having seen the seniority list. Copy of the same be forwarded to this HQ for our record please.*
- 3. I have further been directed to inform that, the seniority of list in the rank of Inspector/Junior Engineer(Civil), Assistant Commandant(Works) and*

*Deputy Commandant(Works) will be issued once the DPC proceeding are completed and promotions are issued.*

*-sd-*

*(B B Sidhra)*

*Commandant(Staff)*

*21<sup>st</sup> Feb 2012"*

**12.10.** In that final seniority list Shri S.C. Das has been shown at Sl. No.6, Shri R.K. Shrivastava at Sl. No.11, Smti. S. Chatterjee at Sl. No.13 and Shri Bhupinder at Sl. No.17. That means, the position which was shown in the draft seniority list was maintained and after considering the records and the representation of all the incumbents of the cadre, the seniority list was finalised and published by the official respondents. It contains a total of 96(ninety six) persons serving in the post of AE(C)/AC.

**12.11.** That final seniority list dated 21.02.2012 though brought on record by the official respondents by filing additional counter affidavit on 21.08.2013 and though all those writ petitions were listed and heard together, none of the petitioners challenged that final seniority list which stands good.

**12.12.** The official respondents contended that the appointment of Shri Bhupinderjit in the post of AE(C)/AC *w.e.f.* 06.11.1996 was wrong, which has been found to be just and valid as already held hereinbefore. The absorption of Shri R.K. Shrivastava *w.e.f.* 16.05.2000 in the post of AE(C)/AC is also found to be correctly

made and it is clearly held hereinbefore that Shri R.K. Shrivastava was not entitled to get his seniority with retrospective effect from 11.02.1995. The official respondents made an exercise taking into account the initial appointment of Shri R.K. Shrivastava, Shri Bhupinderjit Singh and other incumbents before their appointment/absorption in the post of AE(C)/AC and thereafter finalised the seniority list. Since the final seniority list dated 21.02.2012 has not been challenged by any of the petitioners though it has been brought on record by filing additional counter affidavit on 21.08.2013 and since by that final seniority list the respective positions of the petitioners and other private respondents have been finalised, I am of considered opinion that the dispute in respect of the seniority position of the petitioners and the private respondents in the cadre of AE(C)/AC shall be over. The position of Shri S.C. Das, the petitioner of WP(C) No.375 of 2006 has already been shown above Shri Bhupinderjit Singh and though the respondent No.4, Shri Balbir Singh Sandhu has been shown above him but since he has neither challenged the draft seniority list dated 07.10.2008 nor the final seniority list dated 21.02.2012 and hence I find nothing to pass further order in respect of the seniority of Shri S.C. Das in the cadre of AE(C)/AC. The position of Shri R.K. Shrivastava and Shri Bhupinderjit Singh has been correctly considered consistent with their position in the cadre and they are not entitled to get seniority over the private respondents of their respective writ petitions.

**13. WHETHER WP(C) NO.248 OF 2009, WP(C) NO.90 OF 2010 AND WP(C) NO.110 OF 2011 SUFFER FROM DELAY AND LACHES AND THEREFORE LIABLE TO BE DISMISSED?**

**13.1.** The doctrine of laches is based upon maxim that "*equity aids the vigilant and not those who slumber on their rights*". It is defined as "*neglect to assert a right or claim which, taken together with lapse of time and every circumstances causing prejudice to adverse party, operates as a bar in a court of equity*". It is a settled law that a writ court must administer justice in accordance with law and principles of equity, justice and good conscience. It is expected that a person who feels deprived for infringement of his right approaching the court immediately after the cause of action shall arise. If he sits over his right and does not come forward to approach the court in time and later on approaches the court but without assigning any reason for having delayed approach, in my considered opinion the writ petition should be termed as suffered from the mischief of delay and laches.

The Supreme Court in the case of ***Shankara Cooperative Housing Society Ltd. v. M. Prabhakar*** reported in ***(2011) 5 SCC 607*** in para 54 of the judgment observed—

*"54. The relevant considerations, in determining whether delay or laches should be put against a person who approaches the writ court under Article 226 of the Constitution is now well settled. They are:*

*(1) There is no inviolable rule of law that whenever there is a delay, the Court must necessarily refuse to entertain the petition; it is a rule of practice based on sound and proper exercise of discretion, and each case must be dealt with on its own facts.*

*(2) The principle on which the Court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because Court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners.*

*(3) The satisfactory way of explaining delay in making an application under Article 226 is for the petitioner to show that he had been seeking relief elsewhere in a manner provided by law. If he runs after a remedy not provided in the statute or the statutory rules, it is not desirable for the High Court to condone the delay. It is immaterial what the petitioner chooses to believe in regard to the remedy.*

*(4) No hard-and-fast rule, can be laid down in this regard. Every case shall have to be decided on its own facts.*

*(5) That representations would not be adequate explanation to take care of the delay."*

**13.2.** Shri R.K. Shrivastava by filing the writ petitions substantially prayed for giving him retrospective effect of his promotion w.e.f. 11.02.1995 instead of 16.05.2000. The official respondents by order dated 25.11.2002 have given him promotion by way of absorption with effect from 16.05.2000. So it is clear that

the cause of action arose in the year 2002 when the impugned order dated 25.11.2002(*Annexure-P9* to WP(C) No.248 of 2009) was passed by the official respondents but Shri R.K. Shrivastava approached the Court in the year 2009 and thereafter in the year 2011.

The second material prayer of Shri R.K. Shrivastava is the challenge to the appointment of Shri S.C. Das and Smti. S. Chatterjee as direct recruits. Admittedly, the direct recruitment of Shri Das and Smti. Chatterjee was made in the year 1997 and 1998 respectively and they have been working in the same cadre but Shri Shrivastava has chosen to challenge their appointment as direct recruits in the year 2009 and 2011. No reason assigned in either of the writ petitions as to why the approach to the Court was made after such a long delay.

**13.3.** Both Shri R.K. Shrivastava and Shri Bhupinderjit Singh filed the writ petitions challenging the draft seniority list dated 07.10.2008. Shri Bhupinderjit earlier also filed WP(C) No.379 of 2009 challenging order dated 07.10.2008 which was disposed of by order dated 07.12.2009 and so in respect of that cause of action of challenging the draft seniority list dated 07.10.2008 the writ petitions cannot be said to have suffered from delay and laches. Shri Bhupinderjit also challenged the appointment of Shri Das and Smti. Chatterjee in his subsequent writ petition, *i.e.* WP(C) No.90 of 2010 and nothing stated in his writ petition whether in his earlier

writ petition he challenged the appointment of Shri Das and Smti. Chatterjee. However, the challenge having been made after more than ten years, definitely, it should be termed as suffered from delay and laches.

**13.4.** Learned senior counsel, Mr. Sankar Deb while arguing on the point of delay and laches has referred the cases of ***Assam Sanmilita Mahasangha v. Union of India*** reported in **(2015) 3 SCC 1** and ***Bangalore City Coop. Housing Society Ltd. v. State of Karnataka*** reported in **(2012) 2 SCC 727** and submitted that a writ petition should not be dismissed on the ground of delay and laches since there is no *hard-and-fast* rule or a *straight-jacket* formula for rejecting a writ petition filed under Article 32 or Article 226 of the Constitution. If it is found that a writ petition merits consideration of a legitimate claim, it should be decided on merit.

**13.5.** In the case of ***Assam Sanmilita Mahasangha***(*supra*) the Supreme Court has held that a writ petition should not be summarily dismissed on delay and laches if it comes to the notice that there are violations of fundamental right to life and personal liberty, and in such cases delay or laches by itself without more would not be sufficient to shut the doors of the court on any petitioner.

**13.6.** In the cases at hand, Shri Bhupinderjit filed the writ petition at first in the year 2009 challenging the tentative seniority

list dated 07.10.2008 which was disposed of by order dated 07.12.2009 and after his representation was disposed of by order dated 18.01.2010, he filed the present writ petition, *i.e.* WP(C) No.90 of 2010 wherein he has *inter alia* challenged the appointment of Shri S.C. Das and Smti. S. Chatterjee, *i.e.* respondent Nos.5 and 6 respectively. In addition to that he challenged the tentative seniority list dated 07.10.2008. Shri R.K. Shrivastava, the petitioner of WP(C) No.248 of 2009 in his writ petition did not put any challenge to the tentative seniority list and in that writ petition he substantially prayed for his promotion with retrospective effect from 11.02.1995 and also challenged the appointment of Shri Das and Smti. Chatterjee as direct recruits. So that writ petition since filed after a long delay from the date of the cause of action suffers from the mischief of delay and laches. The other writ petition, *i.e.* WP(C) No.110 of 2011 filed by Shri R.K. Shrivastava is, no doubt, a second writ petition while WP(C) No.248 of 2009 was pending and substantially he claimed the same relief what was prayed by him in WP(C) No.248 of 2009 and in addition he challenged the tentative seniority list dated 07.10.2008 and though this writ petition in view of that challenge cannot be said to have filed after an abnormal delay but the petitioner did not come up with any statement in that writ petition as to why he did not challenge it in his earlier writ petition while that writ petition was pending and so this writ petition of the petitioner shall also be bound to be treated as suffered from the delay and laches. Therefore, WP(C) No.248 of 2009 and WP(C) No.110 of 2011, in my considered opinion, suffer from the mischief

of delay and laches and therefore the petitioner Shri R.K. Shrivastava is not entitled to any relief in those writ petitions.

**14.            *WHETHER WP(C) NO.90 OF 2010 IS LIABLE TO BE DISMISSED FOR WILLFUL AND DELIBERATE SUPPRESSION OF MATERIAL FACTS?***

**14.1.**        It is an admitted position that Shri Bhupinderjit, the petitioner of WP(C) No.90 of 2010 was arrayed as respondent No.5 in WP(C) No.375 of 2006 filed by Shri S.C. Das. He appeared in that writ petition and submitted his counter affidavit. In that counter affidavit he did not put any challenge to the appointment of Shri S.C. Das as a direct recruit in the cadre of AE(C)/AC, whereas, in his writ petition he has challenged the appointment of Shri S.C. Das and Smti. S. Chatterjee as direct recruits. In his writ petition he did not utter a single word that he appeared in WP(C) No.375 of 2006 and submitted his counter affidavit in that writ petition. It is an admitted position that WP(C) No.375 of 2006 was disposed of by judgment dated 24.08.2007 by the learned Single Judge of the then Agartala Bench of the Gauhati High Court and he also did not challenge that judgment by filing any *intra-court* appeal or otherwise. However, that judgment was set aside in the appeal filed by the official respondents and the case was remanded back to the single Bench for fresh decision. In his writ petition he did not narrate those material facts that he participated in the earlier writ petition filed by Shri S.C. Das and submitted his counter statement and he also did not assign any reason as to why he did not

challenge the appointment of Shri S.C. Das in the post of AE(C)/AC while filing counter affidavit in WP(C) No.375 of 2006. He also did not say anything in his WP(C) No.90 of 2010, whether in his earlier writ petition, *i.e.* WP(C) No.379 of 2009 he challenged the appointment of Shri S.C. Das and Smti. S. Chatterjee or not and if not why? Para 14 of his writ petition clearly shows that in his earlier writ petition, *i.e.* WP(C) No.379 of 2009, he did not challenge the appointment of Shri Das and Smti. Chatterjee, but in this writ petition he did so, whereas assigned no reason for doing so. The writ petition filed by the petitioner Shri Bhupinderjit therefore suffers from willful and deliberate suppression of material facts and for that the writ petition is liable to be dismissed with costs.

**15.            *WHETHER WP(C) NO.248 OF 2009 AND WP(C) NO.110 OF 2011 FILED BY SHRI R.K. SHRIVASTAVA ARE LIABLE TO BE DISMISSED FOR WILLFUL AND DELIBERATE SUPPRESSION OF MATERIAL FACTS AND WHETHER SUCH CONSECUTIVE WRIT PETITIONS AMOUNTS TO ABUSE OF PROCESS OF THE COURT?***

**15.1.**        Shri R.K. Shrivastava filed WP(C) No.248 of 2009 seeking direction to give effect of his promotion *w.e.f.* 11.02.1995 in place of 16.05.2000 and also challenged the appointment of Shri Das and Smti Chatterjee as direct recruits. While that writ petition was pending, he filed WP(C) No.110 of 2011 seeking particularly those two reliefs and further challenged the tentative seniority list

dated 07.10.2008 and also the seniority position of respondent Nos.5 and 6 of that writ petition.

In WP(C) No.248 of 2009 the official respondents in their counter affidavit in para 7 clearly contended that the petitioner Shri R.K. Shrivastava filed another writ petition No.38 of 2004 before Jammu & Kashmir High Court praying for giving him the benefit of seniority *w.e.f.* 11.02.1995 and while that writ petition was pending before the Jammu & Kashmir High Court he filed WP(C) No.248 of 2009 before Agartala Bench of the then Gauhati High Court. In his rejoinder affidavit submitted in response to the counter affidavit of the official respondents the petitioner dealt with the contention of para 7 of the counter affidavit of the official respondents in para 8 of his rejoinder affidavit wherein he clearly stated,

*"The statements made in paragraph 7 of the counter affidavit are all matters of record and as such the statements as are borne from records are admitted by me".*

In the rest of the paragraph he did not elaborate anything contradicting the statements of the official respondents about the earlier writ petition filed in Jammu and Kashmir High Court seeking the same relief.

In WP(C) No.110 of 2011 the official respondents in para 10 of the counter affidavit again raised the same contention

that the petitioner filed a writ petition No.38 of 2004 in the Jammu and Kashmir High Court seeking seniority with effect from 11.02.1995 and that writ petition was pending. In his rejoinder affidavit in para 9 the petitioner dealt with the contention of the official respondents made in para 10 of their counter affidavit and stated—

*“The statements made in paragraph 10 of the Affidavit-in-Opposition have no nexus in the present case. The subject matter and reliefs of the case in Writ Petition No.38 of 2004 before the Hon’ble High Court in Jammu & Kashmir are all different from the reliefs sought for in the present petition”.*

The official respondents filed additional counter affidavit challenging the contention of the petitioner made in the rejoinder affidavit and dealt with para 9 of the rejoinder affidavit, in para 10 of their additional counter affidavit and the relevant part reads as follows:

*“10. That, in reply to the statement made in para-9 of the Rejoinder, it is submitted that, petitioner in Writ Petition 38 of 2004 filed before Hon’ble J&K High Court at Jammu prayed as under:-*

- i) Directing the respondents to re-fix the seniority of the petitioner and to give the benefit of seniority to the petitioner to the post of Asstt Engineer(Civil)/Asstt Commandant retrospectively with effect from 11.02.1995;*

*ii) To give all consequential benefits to the petitioner on the post of Assistant Engineer(Civil)/Assistant Commandant by giving benefit of seniority retrospectively and also to give all the promotional benefits."*

**15.2.** The petitioner did not controvert the above contention that he filed WP(C) No.38 of 2004 before Jammu & Kashmir High Court seeking the same relief that he prayed for retrospective seniority with effect from 11.02.1995. It is, therefore, abundantly clear that the petitioner is in the habit of filing consecutive writ petitions without referring to the earlier writ petition to a subsequent writ petition. While the writ petition seeking relief of seniority *w.e.f.* 11.02.1995 was pending before Jammu & Kashmir High Court he would not file the present writ petitions before this Court again seeking the same relief without referring to the fact that he earlier filed the writ petition before the Jammu & Kashmir High Court and that is pending for decision. It is a deliberate and willful suppression of material facts and a sheer abuse of the process of the Court. In his writ petition, *i.e.* WP(C) No.248 of 2009 he did not mention about the case he filed earlier before Jammu & Kashmir High Court. In his subsequent writ petition, *i.e.* WP(C) No.110 of 2011 also he did not mention about his writ petition filed before Jammu & Kashmir High Court as well as his earlier writ petition, *i.e.* WP(C) No.248 of 2009 pending before this Court.

**15.3.** It is a settled law that the jurisdiction of the apex Court under Article 32 and the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner while approaching this Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seeks an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim. [(2003) 9 SCC 401, *Vijay Syal v. State of Punjab*, (2007) 8 SCC 499, *Prestige Lights Ltd. v. State Bank of India*, (2004) 7 SCC 166, *M/S. S. J. S. Business Enterprises (P) Ltd v. State of Bihar & Ors.*].

**15.4.** The Supreme Court while dealing with such issues in the case of *Vijay Syal*(*supra*) in para 24 has observed—

*"24. In order to sustain and maintain the sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material*

*facts it does so at its risk and cost. Such party must be ready to take the consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters is either mistaken or lightly taken instead of learning a proper lesson. Hence there is a compelling need to take a serious view in such matters to ensure expected purity and grace in the administration of justice.”*

**15.5.** In the case of ***Udyami Evam Khadi Gramodyog Welfare Sanstha v. State of U.P.*** reported in **(2008) 1 SCC 560**, the Supreme Court in para 16 of the judgment has held—

*"16. A writ remedy is an equitable one. A person approaching a superior court must come with a pair of clean hands. It not only should not suppress any material fact, but also should not take recourse to the legal proceedings over and over again which amounts to abuse of the process of law. In Advocate General, State of Bihar v. M/s. Madhya Pradesh Khair Industries and Another [(1980) 3 SCC 311], this Court was of the opinion that such a repeated filing of writ petitions amounts to criminal contempt.”*

**15.6.** Shri R.K. Shrivastava, the petitioner filed three consecutive writ petitions—one before the Jammu & Kashmir High Court, and two writ petitions before this Court which are dealt with in this judgment and he filed the consecutive writ petitions seeking the same relief fundamentally that is the relief of his claim of seniority from the year 1995. In the subsequent writ petition he

added some other reliefs which he would claim in his first writ petition itself, if he was so interested since that writ petition is pending and there is nothing that the said writ petition filed before Jammu & Kashmir High Court has been disposed of. He has not mentioned the fact of his earlier writ petition in the subsequent writ petition and thereby deliberately and willfully suppressed the material facts and by way of suppressing the material facts he has also abused the process of the Court. Therefore, both the writ petitions, *i.e.* WP(C) No.248 of 2009 and WP(C) No.110 of 2011 are liable to be dismissed with exemplary costs.

**16.            *WHETHER WP(C) NO.90 OF 2010 FILED BY SHRI BHUPINDERJIT IS BARRED BY SECTION 11 AND ORDER II RULE 2 OF CPC?***

**16.1.**        Learned counsel, Mr. Somik Deb submitted that Shri Bhupinderjit Singh being the respondent No.5 in WP(C) No.375 of 2006 did not challenge the judgment dated 24.08.2007 passed by the learned Single Judge and so that decision is binding on Shri Bhupinderjit. He has also submitted that the subsequent writ petition filed by Shri Bhupinderjit is not maintainable since it is barred by *res judicata* in view of the earlier decision of WP(C) No.375 of 2006.

**16.2.**        Learned senior counsel, Mr. Sankar Deb countering the submission of learned counsel, Mr. Somik Deb contended that the judgment passed by the learned Single Judge was set aside by the Division Bench and therefore that judgment cannot operate as a bar

on the petitioner in approaching the Court by filing a fresh writ petition.

**16.3.** I cannot agree with the submission of learned counsel, Mr. Somik Deb that the decision of the Single Bench in WP(C) No.375 of 2006 dated 24.08.2007 is binding on the petitioner Shri Bhupinderjit since he did not challenge that judgment. On perusal of the judgment of Division Bench I find that the Division Bench held:

*"The appeal is allowed. The impugned order is set aside and the matter is remanded back to the learned Single Judge with a request to decide of the matters afresh in accordance with the observations made by us."*

**16.4.** While that judgment of the learned Single Judge was set aside and the case was remanded back for a fresh decision along with other writ petitions, nothing remains to hold that the finding of the learned Single Judge was binding on the petitioner, Shri Bhupinderjit since he did not challenge that judgment. Once that judgment was set aside by the Division Bench it has to be treated as was set aside as a whole and no part of it remains alive since no such direction/observation was given by the Division Bench in the appellate judgment. I further find that Shri Bhupinderjit filed WP(C) No.379 of 2009 and that was disposed of by order dated 07.12.2009 with a direction to dispose his representation regarding the tentative seniority list dated 07.10.2008 and other representation and while those representations were disposed of by

order dated 18.01.2010 and the decision was against the petitioner Shri Bhupinderjit, he has filed the present writ petition, *i.e.* WP(C) No.90 of 2010 and that petition cannot be said to be barred by *res judicata* or Order II Rule 2 of CPC.

**17.** In view of the discussions made above, WP(C) No.375 of 2006 is disposed of with the observation that no further relief is required to be granted to the petitioner since his seniority has already been considered by the official respondents in the final seniority list dated 21.02.2012 wherein he has been shown above respondent No.5 but below respondent No.4 and since he did not challenge that final seniority list no further relief is permissible to the petitioner. There is no legal compulsion for the official respondents to maintain a separate seniority list for the direct recruits and for the promotees of the officers of same cadre. The seniority may be maintained by the official respondents keeping due regard to the law laid down by the apex Court and taking into account the date of appointment of the particular category of the member of the cadre and taking into consideration the vacancy available for the particular category. In my considered opinion, the petitioner Shri S.C. Das of WP(C) No.375 of 2006 is not entitled to get any further relief besides what is already given by the official respondents by publishing the final seniority list dated 21.02.2012.

**18.** WP(C) No.248 of 2009 and WP(C) No.110 of 2011, in view of the discussions made hereinbefore are liable to be

dismissed with exemplary costs. Both the writ petitions, accordingly, are dismissed with costs of ₹.1,00,000/-(rupees one lakhs) to be paid by the petitioner Shri R.K. Shrivastava to the fund of the High Court Legal Services Committee to spend the amount in providing legal aid to the deserving litigants and the payment should be made within 8(eight) weeks from today.

**19.** WP(C) No.90 of 2010 filed by Shri Bhupinderjit Singh, in view of the discussions made hereinbefore also stands dismissed with costs of ₹25,000/-(rupees twenty five thousand) to be paid by petitioner Shri Bhupinderjit Singh to the fund of High Court Legal Services Committee and the amount should be spent to provide legal aid to the deserving litigants as per rules and the payment should be made within 8(eight) weeks from today.

**20.** All the writ petitions accordingly stand disposed of.

**21.** The official file submitted by learned CGC may be returned.

**JUDGE**