IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MR.JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

O.P.(KAT).No. 504 of 2013 (Z)

AGAINST THE ORDER IN T.A. NO. 4522/2012 of KERALA ADMINISTRATIVETRIBUNAL, THIRUVANANTHAPURAM DATED 19-12-2012. (W.P.(C)NO.34323/2011).

PETITIONER(S)/APPLICANTS:
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1. SADAYAKUMAR K.V.,
EXCISE INSPECTOR,
OFFICE OF THE ASSISTANT EXCISE COMMISSIONER,
EXCISE INTELLIGENCE AND INVESTIGATION BUREAU,
CENTRAL ZONE, ERNAKULAM.

2. T.V. DIVAKARAN,
EXCISE INSPECTOR, EXCISE RANGE OFFICE,
VARAPPUZHA, ERNAKULAM.

3. K. ABDUL AZEEZ,
EXCISE INSPECTOR, EXCISE CIRCLE OFFICE,
SULTHAN BATHERY, WAYANAD DISTRICT.

4. P.B. GOPALAKRISHNAN,
EXCISE INSPECTOR,
OFFICE OF THE ADDITIONAL EXCISE COMMISSIONER (ENFORCEMENT)
COMMISSIONERATE OF EXCISE, THIRUVANANTHAPURAM.

BY ADVS.SRI.K.JAJU BABU (SR.)
SMT.M.U.VIJAYALAKSHMI
SRI.BRIJESH MOHAN
SRI.JIKKU SEBAN GEORGE

RESPONDENT(S)/RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001

P.T.O.

2. THE COMMISSIONER OF EXCISE
   COMMISSIONERATE OF EXCISE,
   THIRUVANANTHAPURAM-695 039.

3. THE JOINT EXCISE COMMISSIONER,
   THIRUVANANTHAPURAM-695 039.

4. THE ADDITIONAL EXCISE COMMISSIONER (ADMINISTRATION),
   THIRUVANANTHAPURAM-695 039.

5. SRI. P.L.JOSE, EXCISE INSPECTOR,
   EXCISE RANGE OFFICE, CHALAKUDY - 680 307.

6. SRI. SHIBU Y., EXCISE INSPECTOR,
   EXCISE CIRCLE OFFICE, KOCHI-682 018

7. SRI. MANJU T.M., EXCISE INSPECTOR,
   DEVIKULAM DISTILLERIES LIMITED,
   KAKKANAD ERNAKULAM-682 030.

*ADDL.R8

R. BIJU KUMAR, AGED 47 YEARS,
EXCISE INSPECTOR,
EXCISE CIRCLE INSPECTOR OFFICE,
N.PARUR, PIN-683 513
S/O. K.P. RAVEENDRAN,
RESIDING AT KUNILVALATHIL HOUSE,
PARAVOOR, KUNAPPARA NORTH P.O.,
ALAPPUZHA DISTRICT - PIN - 680 014.

* IS IMPLEADED AS PER ORDER IN I.A.NO.3452 OF 2013 DATED 11.03.2013.

*ADDL. RESPONDENTS R9 TO R18

ADDL.R9 ANI KUMAR T.,
EXCISE INSPECTOR,
EXCISE INTELLIGENCE AND INVESTIGATION BUREAU,
THIRUVANANTHAPURAM.

ADDL.R10 ASOKAN R.,
EXCISE INSPECTOR,
EXCISE HEADQUARTERS,
THIRUVANANTHAPURAM.

ADDL.R11 BHUVANACHANDRAN S.,
EXCISE INSPECTOR,
EXCISE RANGE OFFICE,
NOORANAD, ALAPPUZHA DIST.

P.T.O.

ADDL.R12 SASIDHARAN K.K.,
EXCISE INSPECTOR,
SEVEN SEAS DISTILLERY,
MANNUTHY, THRISSUR.

ADDL.R13 RAMESH LAL K.S.,
EXCISE INSPECTOR,
MALABAR BREWERIES,
CHALAKKUDY, THRISSUR.

ADDL.R14 RADHAKRISHNAN K.,
EXCISE INSPECTOR,
EXCISE RANGE OFFICE,
KAYAMKULAM, ALAPPUZHA DIST.

ADDL.R15 BHADRAKUMARAN NAIR K.S.,
EXCISE INSPECTOR,
EXCISE CHECK POST TILES FACTORY,
NEYYATTINKARA, THIRUVANANTHAPURAM.

ADDL.R16 SREEKANTAN NAIR S.,
EXCISE INSPECTOR,
EXCISE HEADQUARTERS,
THIRUVANANTHAPURAM.

ADDL.R17 SHAJI K.M.,
EXCISE INSPECTOR,
EXCISE CIRCLE OFFICE,
THRISSUR.

ADDL.R18 PRASAD O.,
EXCISE INSPECTOR,
EXCISE RANGE OFFICE,
KOTTARAKKARA, KOLLAM DIST.

*ADDITIONAL RESPONDENTS 9 TO 18 ARE IMPLEADED AS PER ORDER DATED 26.06.2013 IN I.A.NO.7994/2013.

*ADDL.R19

CHANDRAMOHANAN NAIR D.,
EXCISE CIRCLE INSPECTOR,
EXCISE CHECK POST, AMARAVILA,
THIRUVANANTHAPURAM - PIN - 695 122.

*IS IMPLEADED AS PER ORDER IN I.A.NO.12226 OF 2014 DATED 13.10.2015.

P.T.O.

*ADDL. RESPONDENTS 20 TO 25:

ADDL.R20 M.S. BALAKRISHNAN,
EXCISE INSPECTOR, EXCISE CHECK POST,
VALAYAR, PALAKKAD,
AGED 52 YEARS, S/O. K.S. MENON,
RESIDING AT MELANGATHU HOUSE,
CHAKKUNGAL ROAD, PALARIVATTOM,
KOCHI-682 025.

ADDL.R21 R. RAJESH, EXCISE INSPECTOR,
EXCISE COMMISSIONERATE, NADAVANAM,
THIRUVANANTHAPURAM - 695 033.
AGED 44 YEARS, S/O. A. RAGHAVAN PILLAI,
RADALAYAM, ODANAVATTAM,
KOTTARAKKARA - 691 512.

ADDL.R22 S. RAJEEV,
EXCISE INSPECTOR, OFFICE OF EXCISE INSPECTOR,
DEVICOLAN DISTILLERIES, KAKKANAD,
AGED 47 YEARS, S/O. SRIKUMARAN,
MALAPPANTHARA HOUSE, KALAVANKODAM,
CHERTHALA - 688 524.

ADDL.R23 K.P. GEESAN,
EXCISE INSPECTOR, OFFICE OF JOINT EXCISE COMMISSIONER,
CENTRAL ZONE, KOCHI - 682 017.
AGED 46 YEARS, S/O. K.K. PRABAKARAN,
KOZHIKKATTIL HOUSE,
THAIKKATTUKARA P.O., ALUVA, ERNAKULAM.

ADDL.R24 K. MOHANAN,
EXCISE INSPECTOR,
EXCISE INTELLIGENCE & INVESTIGATION BUREAU,
PATHANAMTHITTA - 689 647.
AGED 50, S/O. AICKARA VEEDU, CHATHAMPUZHA,
CHOORAKODE P.O., PATHANAMTHITTA DISTRICT-691 551.

ADDL.R25 A. ABUBACKAR SIDDHIQ,
EXCISE INSPECTOR,
COMMISSIONERATE OF EXCISE,
NANDAVANAM, THIRUVANANTHAPURAM - 695 033.
AGED 47, S/O. M. ALIYAR KUNJU,
RESIDING AT KALLUKEDERAVILA PUTHEN VEEDU,
IDICHAKKAPLAMOODU, PARASALLA P.O.,
THIRUVANANTHAPURAM - 695 502.

* ADDITIONAL RESPONDENTS 20 TO 25 ARE IMPLEADED AS PER ORDER DATED 13.10.2015 IN I.A.NO.824/2015.

P.T.O.

*<u>ADDL. RESPONDENTS 26 & 27</u>:

ADDL.R26 RAJEEV B. NAIR, AGED 45 YEARS,
S/O. BALAKRISHNAN NAIR, EXCISE INSPECTOR,
EXCISE DIVISION OFFICE, PATHANAMTHITTA,
RESIDING AT SAROVAR, AVALOOKUNNU P.O.,
PATHANAMTHITTA DISTRICT.

ADDL.R27 A.G. PRAKASH, AGED 48 YEARS,
S/O. A.K.GOPALAN, EXCISE INSPECTOR,
EXCISE RANGE OFFICE, CHITTAR,
RESIDING AT NEELANJANAM, ELANTHOOR P.O.,
PATHANAMTHITTA DISTRICT.

* ADDITIONAL RESPONDENTS 26 & 27 ARE IMPLEADED AS PER ORDER DATED 13.10.2015 IN I.A.NO.2115/2015.

*<u>ADDL. RESPONDENTS 28 TO 36</u>:

ADDL.R28 S.K. VINOD KUMAR, S/O. K.SUDHAKARAN NAIR,
EXCISE INSPECTOR, OFFICE OF THE VIGILANCE OFFICER,
EXCISE HEADQUARTERS, THIRUVANANTHAPURAM - 695 033.

ADDL.R29 N. BABU PILLAI, S/O. K. NARAYANAN,
EXCISE INSPECTOR, THE PHARMACEUTICALS AND
CHEMICALS OF TRAVANCORE, VANCHIYOOR (PO),
THIRUVANANTHAPURAM - 695 035.

ADDL.R30 K. KARTHIKEYAN, S/O. T.KARAMPAN,
EXCISE INSPECTOR, EXCISE CHECK POST,
GOPALAPURAM, VANNAMADA P.O., PALAKKAD - 678 555.

ADDL.R31 P. ANIL KUMAR, S/O. PRABHAKARAN,
EXCISE INSPECTOR, UNITED SPIRITS LTD.,
KANJIKODE P.O., PALAKKAD - 678 621.

ADDL.R32 V.M. SHAJAHAN, S/O. T.V. MAJEED,
EXCISE INSPECTOR, PAULSONS DISTILLERY,
CHALAKKUDY P.O., THRISSUR - 680 309.

ADDL.R33 M. KRISHNANKUTTY, S/O. MADHAVAN,
EXCISE INSPECTOR, EXCISE DIVISION
OFFICE, MALAPPURAM.

ADDL.R34 C.K. MANOHARAN, S/O. MADHAVAN NAIR,
EXCISE INSPECTOR, EXCISE RANGE OFFICE,
FEROKE, NALLALAM P.O., KOZHIKODE - 673 027.

ADDL.R35 A.J. BENJAMIN, S/O. ALEYAZER J.,
EXCISE INSPECTOR, PATTAKKULAM
AMARAVILA P.O., THIRUVANANTHAPURAM - 695 122.

ADDL.R36 P.K. SIVANANDAN, S/O. KUTTIKRISHNAN,
EXCISE INSPECTOR, EXCISE RANGE OFFICE,
NEMMARA P.O., PALAKKAD - 675 508.

* ADDITIONAL RESPONDENTS 28 TO 36 ARE IMPLEADED AS PER ORDER DATED 13.10.2015 IN I.A.NO.2711/2015.

R1 TO R4 BY SENIOR GOVERNMENT PLEADER, SMT. REKHA VASUDEVAN
R5 BY ADVS. SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.PETER JOSE CHRISTO
SRI.S.A.ANAND
SRI.S.P.BALAKRISHNA PILLAY
R6 & R7 BY ADVS. SRI.ELVIN PETER P.J.
SRI.T.G.SUNIL (PRANAVAM)
SRI.K.R.GANESH
ADDL.R8 & ADDL.R20 TO R25 BY ADVS. SRI.BENNY GERVACIS
SMT.ANNA THOMAS
RADDL.9-R18 BY ADVS. SRI.C.P.SUDHAKARA PRASAD (SR.)
SRI.S.RAMESH
SRI.NAVEEN.T

ADDL.R26 & R27 BY ADVS. SRI.R.HARIKRISHNAN
SRI.E.RAMACHANDRAN
SRI.R.UMASANKAR
ADDL.R28 TO R36 BY ADV. SRI.RAM MOHAN.G.

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY HEARD ON 13-10-2015, ALONG WITH OP(KAT). 530/2013, THE COURT ON 28.10.2015 DELIVERED THE FOLLOWING:

O.P.(KAT).No. 504 of 2013 (Z)

APPENDIX

PETITIONERS' ANNEXURES:

ANNEXURE- A: TRUE COPY OF THE ORDER DATED 19.12.2012 IN T.A.NO.4522/2012 (W.P.(C) NO.34323/2011) OF THE KERALA ADMINISTRATIVE TRIBUNAL.

ANNEXURE-B: TRUE COPY OF THE ORDER DATED 10.08.2012 IN O.A.NO.1373/2012 OF THE KERALA ADMINISTRATIVE TRIBUNAL.

ANNEXURE-C: COPY OF THE COMMUNICATION NO.XD3-32763/2014 DATED 11.12.2014 OF THE 2ND RESPONDENT.

PETITIONERS' EXHIBITS:

EXHIBIT P1: COPY OF ORDER NO.XD3/37850/2003 DATED 02.11.2004 ALONG WITH THE RELEVANT EXTRACT OF THE FINAL SENIORITY LIST.

EXHIBIT P2: COPY OF G.O.(MS) NO.20/2005/TD DATED 11.2.2005 ISSUED BY 2ND RESPONDENT.

EXHIBIT P3: COPY OF THE ORDER DATED 4.5.2011 NO.XD3-4188/10 OF THE 1ST RESPONDENT.

EXHIBIT P4: COPY OF THE LETTER NO.10672/F1/08/TD DATED 01.07.2008 OF THE 1ST RESPONDENT.

EXHIBIT P5: COPY OF THE JUDGMENT DATED 09.06.2011 OF THIS HON'BLE COURT IN W.P.(C) NO.14577/2011.

EXHIBIT P6: COPY OF THE NOTICE NO.11954/F1/2011/TD DATED 08.08.2011 ISSUED BY 1ST RESPONDENT.

EXHIBIT P7: COPY OF THE WRITTEN ARGUMENT NOTES DATED 18.08.2011 SUBMITTED BY THE PETITIONERS AT THE TIME OF PERSONAL HEARING.

EXHIBIT P8: COPY OF THE G.O.(RT) NO.880/2011/TD DATED 09.12.2011 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT P9: COPY OF THE JUDGMENT OF THIS HON'BLE COURT DATED 09.12.2010 IN W.P.(C) NO.4643/2010.

EXHIBIT P10: COPY OF THE ORDER NO.XD3-4188/10(1) DATED 20.12.2011 ALONG WITH FINAL SENIORITY LIST ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P11: COPY OF ORDER NO.XD3-5184/13 DATED 25.9.2013 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P12: COPY OF THE COMMUNICATION VIDE NO.XD3-31571/2013 DATED 5.12.2013 ISSUED BY THE 2ND RESPONDENT.

P.T.O.

RESPONDENTS' ANNEXURES:

ANNEXURE R5(A): TRUE COPY OF THE OBJECTION DATED 16.04.2004 FILED BY THE 5TH RESPONDENT BEFORE THE JOINT EXC ISE COMMISSIONER.

ANNEXURE R5(B): TRUE COPY OF THE ORDER NO.E1-1176/02 DATED 13.05.2003 OF THE ASSISTANT EXCISE COMMISSIONER, ERNAKULAM.

ANNEXURE R5(C): TRUE COPY OF GOVERNMENT LETTER NO.22113/F1/2012/TD DATED 19.01.2013.

ANNEXURE R5(D): TRUE COPY OF THE GOVERNMENT LETTER NO.15517/F1/2012/TD DATED 19.01.2013.

ANNEXURE R9(A): TRUE COPY OF THE ORDER NO.XD3-4538/2002 DATED 04.10.2002 ALONG WITH EXTRACT OF THE FINAL SENIORITY LIST OF PREVENTIVE OFFICERS FROM 2.2.1993 TO 31.12.1998.

ANNEXURE R9(B): TRUE COPY OF THE JUDGMENT IN W.A.NO.3976/2001 DATED 28.2.2005.

ANNEXURE R9(C): TRUE COPY OF THE JUDGMENT IN O.P.NO.2353/2003 DATED 28.2.2007.

ANNEXURE R9(D): TRUE COPY OF THE ORDER NO.XD3-3907/2008 DATED 16.12.2008 ALONG WITH STATE-WISE FINAL SENIORITY LIST OF EXCISE PREVENTIVE OFFICERS FOR THE PERIOD FROM 2.2.1993 TO 30.6.2003.

//TRUE COPY//

P.S. TO JUDGE

St/-

K. SURENDRA MOHAN
&
SHAJI P. CHALY, JJ.

O.P.(KAT) Nos.504 & 530 of 2013

Dated this the 28th day of October, 2015

JUDGMENT

Shaji P. Chaly, J.

The above Original Petitions are filed against the common judgment in T.A.Nos.4522 and 5730 of 2012 respectively by the applicants in T.A.No.4522 of 2012 and Respondent Nos.10, 4, 5 and 11 respectively in T.A.No.5730 of 2012, dated 19.12.2012. By the said order, Administrative Tribunal dismissed T.A.No.4522 of 2012 and disposed of T.A.No.5730 of 2012 filed by the 5th Respondent in O.P.(KAT) No.5730 of 2013 with suitable directions to the 1st Respondent. Since the subject matter of the Original Petitions are similar in nature and they were disposed of by the Administrative Tribunal by a common judgment, these Original Petitions are also disposed of by a common judgment. The facts described in O.P.(KAT) No.504 of 2013 are stated hereunder and the decision taken thereon will guide the fate of O.P.(KAT) No.530 of 2013 also.

2. Brief facts required for the disposal of the Original Petitions are as follows:

3. Petitioners are presently working in the cadre of Excise Inspector. 1st petitioner joined service as Preventive Officer on 01.12.1998 pursuant to the advise of the Kerala Public Service Commission (for short, “the P.S.C”) dated 28.01.1998. His probation in that cadre was declared with effect from 06.01.2003. He was promoted as Assistant Excise Inspector in July, 2003 and as Excise Inspector in March, 2005. 2nd petitioner joined service as Preventive Officer on 02.05.1998 as per the advise of the P.S.C dated 28.01.1998. His probation in the said cadre was declared with effect from 06.01.2003. He was promoted as Assistant Excise Inspector on 19.07.2003 and as Excise Inspector on 11.03.2005. The 3rd petitioner joined service as Preventive Officer on 02.05.1998 as per advise of the P.S.C on 28.01.1998. He was promoted as Assistant Excise Inspector on 19.07.2003 and Excise Inspector on 11.03.2005. The 4th petitioner joined service as a Preventive Officer on 01.12.1998 as per the advise of the P.S.C dated 28.01.1998. He was promoted a Assistant Excise Inspector in July, 2003 and as Excise Inspector in March,

2005.

4. The seniority list of Preventive Officers was finalised and the petitioners were assigned Rank Nos.638, 530, 561 and 642 respectively. Later, 3rd Respondent finalised the seniority list of Assistant Excise Inspectors for the period from 01.11.1996 to 31.12.2003 as per Ext.P1 and they were assigned rank Nos.492, 485, 487 and 493, respectively. Based on the said seniority, petitioners were promoted as Excise Inspectors pursuant to the selection conducted by the Departmental Promotion Committee (DPC), as per Ext.P2. They were promoted as Excise Inspectors on various dates during March, 2005. It is contended that petitioners have no intimation of any challenge against their ranking or promotion as per Exts.P1 and P2 within the time prescribed by Rules.

5. It is also contended by the petitioners that all on a sudden, 4th Respondent issued Ext.P3 order dated 04.05.2011 revising the seniority position of the petitioners as per Ext.P1 without notice to them. Even though there is a reference to a Government letter dated 01.07.2008 in Ext.P3, wherein the Government directed to re-examine the assignment of positions in the seniority list which is produced as Ext.P4, it is

contended by the petitioners that Ext.P4 was also issued without notice to the petitioners. It is also stated that Exts.P3 and P4 were issued at the instance of the 5^{th} Respondent. It is also contended by the petitioners that the seniority list of Assistant Excise Inspectors was finalised as per Ext.P1 as early as on 02.11.2004 and there was no challenge against Ext.P1 within a reasonable time and therefore there was no justification on the part of the Respondents for reviewing the assignment of rank positions in Ext.P1 and that apart, Ext.P2 select list was published as early as on 11.2.2005. In those circumstances, petitioners approached this Court by filing W.P.(C) No.14577 of 2011 challenging Exts.P3 and P4 and this Court vide Ext.P5 judgment, quashed Exts.P3 and P4 and directed the 1st Respondent to re-consider the matter after hearing the petitioners as well as affected parties.

6. Pursuant to Ext.P5, petitioners were called for a personal hearing on 11.08.2011 as per Ext.P6. Personal hearing was conducted by Sri. George Chacko, Under Secretary of Taxes Department, before whom Ext.P7 written argument notes were submitted by the petitioners. After hearing, 1st Respondent has issued Ext.P8 order dated

09.12.2011, holding that Government are of the view that the request of the petitioners in W.P.(C) No.14577 of 2011 for retaining the seniority list of Assistant Excise Inspectors dated 02.11.2004 (Ext.P1) and select list dated 11.02.2005 (Ext.P2) deserves no consideration and have ordered accordingly. It is also ordered that as per Rule 30, Part-I of Kerala State and Subordinate Services Rules, 1958 (for short, "K.S.& S.S.R") the direction issued by the Government vide Ext.P4 letter to revise the erroneous seniority list of Assistant Excise Inspectors is in order.

7. Aggrieved by Ext.P8 order, petitioners filed W.P.(C) No.34323 of 2011 before this Court. This Court as per order dated 21.12.2011 admitted the writ petition and stay of Ext.P8 was granted. However, 4th Respondent finalised the provisional seniority list of Excise Inspectors for the period from 01.01.2004 to 30.06.2006 as per Ext.P10 order dated 20.12.2011. While so, petitioners filed Contempt of Court Case No.161 of 2012 contending that the 4th Respondent has violated the interim order passed by this Court dated 21.12.2011. But, later on, based on the assurance given by the 2nd Respondent that the DPC would be convened only

after getting directions from the Court, the Contempt of Court Case was closed. In the meantime, consequent to formation of the Administrative Tribunal, the writ petition was transferred and re-numbered as T.A.No.4522 of 2012. The said T.A. was heard along with T.A.No.5730 of 2012 filed by the 5th Respondent before this Court and later transferred to the Administrative Tribunal. The Tribunal, as per its order dated 19.12.2012 dismissed T.A.No.4522 of 2012 filed by the petitioners and disposed of T.A.No.5730 of 2012 filed by the 5th Respondent, allowing him to move the Government for implementation of Exts.P8 and P10. It is challenging the said orders passed by the Administrative Tribunal, these Original Petitions are filed by the petitioners.

8. 2nd Respondent in O.P.(KAT) No.530 of 2013 has filed a counter affidavit traversing the pleadings in the Original Petition and affirming the facts therein and the said counter affidavit was requested to be adopted in O.P.(KAT) No.504 of 2013. It is contended that the Administrative Tribunal brushed aside all the contentions of the petitioners and upheld Ext.P8 order of the Government, by which it was specifically held that the petitioners are not entitled to the benefit of Rule 28(bbb)

of K.S & S.S.R and also that as per Rule 30 of Part-II of K.S & S.S.R, Government have got the power to revise any list of approved candidates for appointment or promotion to any category, class or service, prepared by the Head of the Department. It is also contended that Ext.P10 seniority list published in conformity with Ext.P8 cannot be described as illegal or unauthorized.

9. Further, it is contended that in the impugned judgment in T.A.No.5730 of 2012, the Tribunal has given liberty to the Respondents to take further action which will redress the grievance of the applicant therein. Therefore, Ext.P10 order passed by the Respondents cannot be assailed by the petitioners. It is also contended that 1st Respondent is vested with powers under Rule 30, Part-I of K.S.&S.S.R to revise and recast any select list or seniority list if it is found to be erroneous and if discrepancies and illegalities occur in the list. It is also contended that there is no delay or laches in challenging the seniority list from the part of the contesting Respondents and the challenge accordingly, is not sustainable. It is further contended that the final seniority list of Assistant Excise Inspectors for the period from 01.11.1996 to

31.12.2003 was published by order dated 02.11.2004 and it was specifically stated that the finalization of the seniority of Assistant Excise Inspector will be subject to the result of O.P.No.18836 of 2002, which O.P. was finally dismissed by the High Court only on 18.09.2008. Therefore, it is contended that the seniority list cannot be called as a settled seniority list as stated by the petitioners.

10. It is also contended that subsequent to the publication of the final seniority list of Assistant Excise Inspectors, the final seniority list of Preventive Officers for the period from 02.02.1993 to 30.06.2003 was revised on 16.12.2008 on the basis of the judgment in W.P.(C) No.32106 of 2005 dated 17.11.2005 and judgment in W.A.No.2663 of 2005 dated 22.12.2005.

11. It is also contended that the general amendment came into force with effect from 02.02.1993 and thereupon the cadre strength in the ratio of 75:25 was applied with effect from 02.02.1993 between the promotees and direct recruits respectively. Accordingly, on finalization of the seniority list of Preventive Officers, it was found that some promotee Preventive Officers included in the earlier seniority list had to

be excluded from the final seniority list to maintain the cadre strength ratio between promotees and direct recruits. In that circumstances, the rank positions of promotees had to be lowered in the final seniority list so as to comply with the Court directions and Government orders. By the time the said list was finalized, the ineligible persons were already promoted to the post of Assistant Excise Inspector and further to the post of Excise Inspector on the strength of the erroneous seniority list of Preventive Officers dated 04.10.2002, it necessitated the 1st Respondent to re-open the seniority list of Assistant Excise Inspectors published on 02.11.2004. It is further contended that in order to settle the issues there was no other way and the entire proceedings were taken as per the direction of this Court in the judgments referred *(supra)*. Therefore, it is contended that the orders passed by the Administrative Tribunal do not suffer from any illegality or other legal infirmities, warranting interference of this Court.

12. Additional 5th Respondent has filed a counter affidavit similar to the contentions raised by the 2nd Respondent and justifying the stand taken by the Government in Exts.P8 and P10 orders. It is also contended that the

petitioners were junior to the 5th Respondent, which is not disputed by the petitioners at any point of time, and that is the reason why petitioners have not raised any contentions on merit, but only on the ground of delay, they contend that their Original Petitions are to be allowed. It is also contended that the 5th Respondent was diligent and conscious in challenging Ext.P1 seniority list and there is no delay on his part and if at all there is any delay, the same is explained and the same was accepted by the Administrative Tribunal also. It is also contended that the *inter se* seniority of the petitioners and the 5th Respondent in the category of Assistant Excise Inspector is to be fixed invoking Rule 27 of Part-II K.S.&S.S.R and according to the said rule, seniority is determined by the date of appointment. It is further contended that to the extent the petitioners and others have been erroneously assigned rank and seniority above the 5th Respondent in Ext.P1 was liable to be set aside.

13. That apart, it is contended that a person becomes test qualified only when the result of the test is declared. The result of the test in which the applicants and six others had appeared was published only after the existing vacancies of

Assistant Excise Inspectors were filled up and after promoting the 5th Respondent. Therefore, for want of test qualification, petitioners were not entitled to be promoted in preference to 5th Respondent or along with 5th Respondent in view of Rule 28 (bb) of K.S.& S.S.R. It is also contended that Rule 28 (bbb) of the K.S.& S.S.R is not applicable to the petitioners since conditions for applying that rule were not satisfied. Rule 28 (bbb) can be made applicable only if vacancies were remaining unfilled for want of test qualified hands and only if there was no change of duty. Therefore, the twin conditions stated therein were not existing, the petitioners were not entitled to the benefit of the said rule. It is also contended that nobody can be assigned rank and seniority above the test qualified hand and further that there is change of duty when a Preventive Officer is promoted as Assistant Excise Inspector. In such circumstances, it is contended that 5th Respondent is entitled to be ranked above the petitioners in Ext.P2 in the light of Rule 28(b)(i)(7) of K.S.&S.S.R. It is also contended that since Ext.P10 is only a consequential order of Ext.P8, there is no reason to interfere with the same and the Tribunal was right in upholding Exts.P8 and P10 orders. In such circumstances, 5th Respondent seeks dismissal of the Original Petitions.

14. Additional Respondent No.8, who is a beneficiary of the impugned order of the Tribunal was impleaded on 11.03.2013 and thereafter additional Respondents 9 to 18 were impleaded on 26.06.2013 on their respective applications. So also, additional Respondents Nos.19 to 36 were impleaded on 13.10.2015 as per orders in the respective applications filed by them.

15. Additional Respondents 9 to 18 filed a counter affidavit basically supporting the contentions of the Government and the 5th Respondent with regard to the factual aspects concerning the seniority and also the rule position under the K.S.&S.S.R. It is also contended by the additional Respondents that they are all seniors to the petitioners and since the seniority was re-cast in accordance with law, petitioners are not at liberty to challenge the same and the Tribunal was justified in passing the order and the same has no legal infirmities. Apart from the same, it is contended that petitioners have not impleaded the necessary parties in the Original Petition and therefore the Original Petitions are to be

dismissed for non-joinder of necessary parties. It is further contended that in Ext.P10 final seniority list of Excise Inspectors petitioners are shown as Sl.Nos.136, 127, 129 and 137 respectively against the seniority position of Respondents 9 to 18 as 68, 73, 74, 75, 76, 77, 78, 79, 80 and 84 and that of the 5th Respondent as 59. Therefore, if the petitioners happen to be ranked above these Respondents in Ext.P10, several persons will be affected and the said likely to be affected necessary parties are not impleaded and therefore it is contended that the Original Petitions on that sole ground suffers from the vice of non-joinder and is liable to be dismissed. That apart, it is contended that in paragraph 2 of the Original Petition, a misleading statement has been made by the petitioners as follows:

> *"The seniority list of Preventive Officers were finalized and the petitioners were assigned rank Nos.638, 530, 561 and 642, respectively. Later, the 3rd Respondent finalised the seniority list of the Assistant Excise Inspectors for the period from 01.11.1996 to 31.12.2003 on 02.11.2004 wherein the petitioners are assigned rank Nos.492, 485, 487 and 493, respectively".*

16. It is contended that the petitioners have made an averment in the Original Petition that, Ext.P1 seniority list of Assistant Excise Inspectors published as per order dated 02.11.2004, they were assigned seniority based on the rank stated *(supra)* in the final seniority list of Preventive Officers. But, actually, it is not so, it is contended. Whereas Ext.P1 final seniority list of Assistant Excise Inspectors is based on the final seniority list of Preventive Officers for the period from 02.02.1993 to 31.12.1998 published as per the order dated 04.10.2002 of the Joint Excise Commissioner and in the said seniority list, petitioners were assigned rank Nos.584, 476, 507 and 588 whereas the additional Respondents 9 to 18 are assigned rank Nos.621, 622, 623, 624, 625, 626, 627, 628, 629 and 630 respectively. It is contended that challenging the said final seniority list of Preventive Officers, several writ petitions were filed before this Court. It is also stated that Ext.R9(a) order dated 04.10.2002, along with extract of final seniority list of Preventive Officers from 02.02.1993 to 31.12.1998, in which it is stipulated that the said seniority list is subject to the decision in O.P.No.18836 of 2002 and W.A.No.3976 of 2001 pending before this Court. Therefore, it

is contended that in view of the pendency of those writ petitions and several other writ petitions challenging the said list, it is obvious that the said list has not become final.

17. W.A.No.3976 of 2001 along with connected Writ Appeals were disposed of by a Division Bench of this Court by judgment dated 28.02.2005 as per Ext.R9(b), leaving open the liberty of the parties to pursue their remedies in appropriate proceedings in view of the development with regard to review of lists. It is also contended that several other developments took place consequent to the filing of various other writ petitions before this Court and consequent to the judgment of the Full Bench of this Court reported in '***Sugathan v. Shahul Hameed***' [2006 (4) KLT 54]. It is further contended that in the meanwhile, the final seniority list of Preventive Officers published as per Ext.R9(a) was modified by the Excise Commissioner and final seniority list of Preventive Officers was published as per Ext.R9(d) dated 16.12.2008. Consequent on the issuance of Ext.R9(d), it is contended that the seniority list of Assistant Excise Inspectors was also to be revised and as a result of which the seniority list of Assistant Excise Inspectors published as per Ext.P1 was revised by Ext.P3 order dated

04.05.2011 and more importantly Ext.R9(d) is referred to as Reference No.3 in Ext.P3. In Ext.R9(d) seniority list, the petitioners were assigned rank numbers above the additional Respondents 9 to 18 and thus it is clear that a misleading statement was made by the petitioners in paragraph 2 of the Original Petition without divulging the correct facts of the seniority list of Preventive Officers in which they were assigned seniority which was published only on 16.12.2008.

18. It is also contended by the learned Senior Counsel that the whole case set up by the petitioners is on the ground that Ext.P1 is a finally settled seniority list of Assistant Excise Inspectors which is not true or correct. That seniority list is based on Ext.R9(a) seniority list of Preventive Officers published as per order dated 04.10.2002, which was cancelled by Ext.R9(d) final seniority list of Preventive Officers and hence necessarily, Ext.P1 seniority list of Assistant Excise Inspectors required modification based on Ext.R9(d) seniority list of Preventive Officers published on 06.12.2008. Therefore, the arguments of the petitioners that settled seniority list has been unsettled is without any substance and that such a contention was raised without divulging the correct facts and

suppressing material facts before this Court and before the Administrative Tribunal. Therefore, it is contended that the Original Petitions are liable to be dismissed also on the ground of suppression of material facts by the petitioners.

19. Learned Administrative Tribunal after hearing the applicants in the Original Applications, the official Respondents and has dismissed the Application filed by the petitioners herein and held that the applicants are entitled to be promoted as Assistant Excise Inspectors only after the results of the Departmental Test undergone by them were published. It was further held that the petitioners were wrongly assigned seniority with effect from the last date of the test which they cleared, but the petitioners sought to sustain the seniority assigned to them relying on the principle of sit back and also highlighting the delay and laches from the part of additional Respondents 5 to 7 to assert their rights. It was further held that under service law jurisprudence, seniority in a cadre should not be disturbed lightly after the lapse of several years, and if done, will result in unsettling of the promotions already ordered and withdrawal of benefits already granted. But, at the same time, Tribunal found that the interference with a

seniority list should be within a reasonable time. By relying on the judgment of the Apex Court in '***Shiba Shankar Mohapatra and Ors. v. State of Orissa and Ors***.' [AIR 2010 SC 706] and relying on paragraph 29 of the said judgment, held that if a seniority position remains undisturbed for 3 to 4 years, the same should not be allowed to be disturbed at the instance of an affected party unless he explains the delay and laches in approaching the adjudicatory forum by furnishing satisfactory explanation. It was further held by the Tribunal that taking note of Ext.P1 list published on 02.11.2004, Rule 27-B representation was preferred by 5th Respondent herein on 07.04.2007, i.e. about two and a half years after the publication of Ext.P1 and therefore relying on the decision of the Apex Court *supra*, Tribunal held that the additional 5th Respondent is not guilty of delay and laches. It was also held that in view of the decision cited *(supra)*, the decision in '***Mohanan v. State of Kerala***' [2005 KLT 212] has no application wherein inordinate delay in seeking review of promotions was condemned.

20. It was also held by the Tribunal that the limitation for filing an appeal under Rule 27-B starts running only from

the receipt of the order by the incumbent concerned or from the date of publication of the order in the Kerala Gazette, whichever is earlier. But, in the case at hand, there is no material on record to show that the seniority list was served on the additional 5th Respondent. It was also held that there is no dispute that the same was never published in the Gazette. Tribunal also held that going by the terms of Rule 27-B the constructive knowledge of the seniority list cannot be taken as a starting point for limitation and taking into account the aforesaid aspects, Tribunal has held that the appeal preferred by the 5th Respondent was never hit by limitation on the basis of constructive knowledge.

21. The Tribunal has also held that the promotion in the case at hand is from a post in the subordinate service to another post in the subordinate service i.e. from the post of Preventive Officer to the post of Assistant Excise Inspector. The provisions in Rule 28(b)(i) applies to promotion in the State service, that it is evident from Rule 28(b)(i)(2) which deals with the constitution of the Departmental Promotion Committees. It was also held that when promotions are to be ordered on the basis of seniority subject to suitability in the

subordinate service, it is done under Rule 28(b)(ii) and therefore the time limit prescribed under Rule 28(b)(i)(8)(b) has no application to the facts of this case. Apart from all these aspects, Tribunal has held that Government is authorised under Rule 30 to revise a DPC list published by the Head of the Department notwithstanding anything contained in the general rules and the Special Rules and the same is an overriding power, even though it has to be exercised fairly and reasonably and in conformity with the principles of natural justice. It was thereupon the Tribunal held that Ext.P8 has been passed after hearing all sides and the contention of the petitioners that the said order is not in conformity with Ext.P5 judgment, cannot be accepted.

22. Heard Sri. K. Jaju Babu, learned Senior Counsel appearing for the petitioners, Sri. C.P. Sudhakara Prasad, learned Senior Counsel for additional Respondents 9 to 18, Sri. S.P.Aravindakshan Pillai for the 5th Respondent, learned Senior Government Pleader, Smt. Rekha Vasudevan for Respondents 1 to 4, Sri. Benny Gervasis, learned counsel appearing for the additional 8th Respondent and Sri. Ram Mohan appearing for additional Respondent Nos.28 to 36.

23. The prime contention advanced by the learned Senior Counsel for the petitioners is that petitioners are entitled to get the benefit of sit back in view of continuance in the post enjoying the seniority fixed under Exts.P1 and P2 and therefore the Respondents are not at liberty at a belated stage to attack the continuance of the petitioners in the posts held by them. Learned Senior Counsel contended that it is true that in the entry level, they were juniors to other party Respondents, but at the same time, petitioners were promoted earlier which was never challenged by any of the parties alleged to be affected thereby within the time limit prescribed under Rule 27-B of Part-II K.S.&S.S.R.

24. To substantiate this point, learned Senior Counsel has invited our attention to the judgments of this Court in '***Mohanan v. State of Kerala***' [2000 (2) KLT 798], which was affirmed by a Division Bench of this Court in W.A.No.919 of 2000 dated 22.07.2003 and the judgment of a Division Bench of this Court in W.A.No.138 of 2011 dated 26.02.2015. While considering ***Mohanan's*** case *(supra)*, Administrative Tribunal found that the same was not a good law in view of the judgment of the Hon'ble Apex Court in ***'Shiba Shankar***

Mohapatra's case *(supra)*, by which it was held that the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. The said judgment of the Apex Court had considered the judgment of '*K.R. Mudgal*', in which it was laid down that a seniority list which remains in existence for 3 to 4 years unchallenged should not be disturbed and thus 3 to 4 years is a reasonable period for challenging the seniority and in case some one agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum by furnishing satisfactory explanation.

25. In the judgment in W.A.No.138 of 2011 *(supra)*, this Court was considering the question of sit back of the Respondents in the said case and held that since the Respondents therein continued in service enjoying the seniority for a period of 10 years without any challenge being made by affected parties, learned Single Judge was right in holding that the Respondents therein were entitled to the benefit of sit back. But the Division Bench in the Writ Appeal (supra), taking into account the judgment of the Hon'ble Apex Court in

'*Sudhakaran v. State of Kerala*' [2006 (2) KLT 817 (SC)] distinguished the facts leading to the Writ Appeal at hand and held that if the subject matter of a case has been continuously under litigation, it cannot be heard to say that the continuance of the incumbents in the post was settled. It was further held that principles of sit back is a subject matter relative to facts depending on case to case and therefore the theory of sit back is to be found out applying the facts adapted to each and every case.

26. Learned Tribunal while appreciating the said contention raised by the petitioners has found that additional 5th Respondent has challenged the seniority provided to the petitioners overlooking the seniority of the 5th Respondent within the time provided under law. Moreover, Tribunal has also found that additional 5th Respondent has chosen to file a petition before the Government challenging Ext.P1 seniority list on 07.04.2007 and therefore it was within the time prescribed under Rule 27-B. Moreover, learned Senior Counsel for the additional Respondents contended that Exts.P1 and P2 lists can never be said to be a settled one in view of the continuous litigation attacking the same was pending before various

Courts. It was also contended that Ext.P1 seniority list was only provisional subject to the result of O.P.No.18836 of 2002. Learned Senior Counsel has invited our attention to Exts.R9(a) and R9(d) produced along with the counter affidavit and pointed out that reference was made in the said orders with regard to the lists that are in question and therefore the petitioners can never put forth the theory of sit back in the facts and circumstances of this case. Yet another contention advanced by the learned Senior Counsel for the additional Respondents was that petitioners cannot claim the benefit of sit back for the reason that at the time when vacancies arose in the post of Assistant Excise Inspectors enabling the petitioners to be promoted from the feeder category of Preventive Officers, petitioners were not qualified for want of test qualification prescribed under the Special Rules. On that account, learned Senior Counsel has invited our attention to the Full Bench decision in '***Varghese & Others v. State of Kerala & Others***' [1981 KLT 458 F.B.] and specifically to paragraph 5 of the judgment, which read thus:

> *"5. A Full Bench of this Court in the decision in James Thomas v. Chief Justice, 1977 KLT 622 has also expressed the view that the general rule is that*

promotions are to be decided upon with reference to time of occurrence of vacancies and not the time of making the appointments. We think there is considerable force in the view that it is the time of occurrence of vacancy that should be relevant for determining the question of promotion and not the time the order of promotion is passed. The relevant date must be definite and not depending upon the volition of the authorities as otherwise the determination would be arbitrary. If it were to be the date of promotion that is to be relevant for determining the title to such promotion the rule is capable of arbitrary exercise. Even if it is honest exercise that would be arbitrary because the fate of the service career will depend in each instance upon the time taken by the concerned authority in passing the order of promotion. On the other hand, there is definiteness in treating the date of occurrence of the vacancy as that which would determine the title of the person to be considered for promotion. The view taken by the Division Bench in Ravindranath v. Calicut University 1977 Lab. I.C. 1127 appeals to us to be the rational view".

27. Apart from that, in paragraph 6 of the said judgment, it was held that it would make no difference whether the vacancies already existed or the vacancies occurred after the juniors become qualified. If there is vacancy as and when a person becomes qualified for being promoted to such vacancy, he would be entitled to be

considered for promotion in that vacancy and further that if there is no vacancy when a person becomes qualified for promotion and the vacancy arose while he remains qualified, as and when such vacancy arises his case for promotion calls for consideration. Therefore, considering all these aspects and the judgments of the Hon'ble Apex Court and this Court referred (*supra*), according to us, there is force in the contention raised by the learned Senior Counsel for the Respondents that petitioners are not entitled to seek the benefit of the principle of sit back.

28. The next point urged by the learned Senior Counsel for the petitioners is that the list was challenged only by 5th Respondent alone and if at all this Court finds that Ext.P8 order passed by the Government is in order, 5th Respondent alone is entitled to have the seniority above the petitioners. Learned Senior Counsel for the additional Respondents *per contra* has contended that even if the list was challenged only by 5th Respondent and the claim raised by the 5th Respondent was relating to the seniority held by 5th Respondent alone against the petitioners, in fact, the list itself was under challenge. So also, learned Senior Counsel contended that the Respondents

did not get any notice of the order or the order was never published in the Gazette in order to have application of Rule 27-B of Part-II K.S.&S.S.R. Therefore, the petitioners cannot seek support of Rule 27-B since the twin conditions laid down thereunder were not complied with by the 1st Respondent. The Tribunal has appreciated the said aspect and has arrived at a finding that the constructive knowledge with regard to the publication of a list was not sufficient to non-suit an incumbent from challenging the list at a later point of time. Apart from the same, Tribunal has also held that Rule 30 of Part-II K.S.& S.S.R enables the Government to review a list at any point of time without any inhibition or prohibition contained in any of the provisions of the service rules or the Special Rules. Appreciating the said circumstances also, learned Tribunal has arrived at a finding that, Ext.P8 order passed by the Government taking into account all these aspects was in order and did not require any interference. We are in agreement with the contentions of the learned Counsel for the Respondents so raised and the findings of the Tribunal in that regard.

29. The next contention advanced by the learned Senior Counsel for the petitioners was that Ext.P2 select list was dated 11.02.2005, which is undisputedly published in the Kerala Gazette dated 18.03.2005 and therefore 5th Respondent cannot plead ignorance about Exts.P1 and P2 lists at least from that date. To the said contention advanced by the petitioners, the Tribunal has found that even assuming that 5th Respondent had knowledge about Ext.P2 list, the same was challenged within 2½ years and going by the judgment of the Hon'ble Apex Court in '***Shiba Shankar Mohapatra***' (supra), the same was within the reasonable period propounded by the Apex Court. Learned Senior counsel for the additional Respondents, on the other hand contended that Exts.P1 and P2 at no point of time were settled consequent to various litigations pending before this Court at different times and therefore it cannot be said that the seniority contained in Exts.P1 and P2 were settled at any point of time.

30. Then again, learned Senior Counsel for the petitioners contended that Rule 30 of Part-II K.S.&S.S.R cannot be brought into play for the reason that the same applies only to a select list and not a seniority list. Rule 30

reads thus:

> ***"30. Revision of list of approved candidates for appointment or promotion.****--Notwithstanding anything contained in these rules or in the Special Rules, the State Government shall have power to revise in any manner they consider suitable, any list of approved candidates, for appointment or promotion to any category, class or service, prepared by the Head of a Department, in exercise of the powers conferred on him by the Special Rules for any service".*

31. On an appreciation of Rule 30, it is seen that power is vested with the State Government to revise in any manner the Government considers it suitable, any list of approved candidates for appointment or promotion to any category, class or service, prepared by a Head of Department in exercise of the powers conferred on him by the Special Rules for any service. In view of the sweeping power conferred on the 1st Respondent under Rule 30, one cannot arrive at a conclusion that the power conferred on the Government under Rule 30 is circumscribed only to revise the select list and not seniority list. The Tribunal has considered this aspect also and found against the petitioners. We also find force in the contentions raised by the learned Senior Counsel for the Respondents and the State Government that the Government is at liberty at any point of time to correct a seniority list or select list of any

category, class or service, irrespective of the period of limitation prescribed under Rule 27-B of Part-II of K.S.&S.S.R.

32. After bestowing our anxious consideration and attention to all the above points raised by the petitioners regarding sit back, limitation under Rule 27-B and the limited power of the Government under Rule 30, we are of the opinion that petitioners are not entitled to get the advantage of sit back, the limitation under Rule 27-B and further that the Government was all powerful under Rule 30 to revise the seniority list or select list prepared by the Head of the Department in exercise of his powers vested under the Special Rules for any service. When such a wide power is conferred on the 1st Respondent to revise any erroneous seniority list etc. etc., there is no rhyme or reason for this Court to see such a power in a limited water tight and pedantic manner. According to us, such a power is conferred on the 1st Respondent under the rule foreseeing eventualities and circumstances of creating illegal and erroneous seniority list select lists etc. etc. by the Head of the Departments and with the avowed object of comprehending such illegal practices. Rule 30 by itself is a check and balance measure available with the Government for

application at appropriate time.

33. We have also seen that when the vacancies arose petitioners were never test qualified and even according to the petitioners, they became qualified for promotion to the post of Assistant Excise Inspectors only in June, 2003. Whereas, all the party Respondents became test qualified much earlier to the petitioners and at a point of time when vacancies arose in the promotion posts. Therefore, viewed in that circumstances, we are unable to enter into a finding that the petitioners were entitled to sit back for continuance in the posts in accordance with the erroneous list prepared by the Department. So also, learned counsel for the additional 8th Respondent has invited our attention to the provisions of Kerala Excise and Prohibition Subordinate Service and specifically invited our attention to Rules 1, 1A and 2 which deals with the category of officers in the Excise Department, which includes Excise Inspectors, Assistant Excise Inspectors, Excise Preventive Officers etc. etc. and the method of recruitment as prescribed under Rule 1A and 2 of the Rules.

34. Apart from the same, learned counsel has invited our attention to Rule 6 and contended that every person

appointed to any of the categories mentioned in column(1) on the table below by direct recruitment shall within the prescribed period of probation pass the tests specified in the corresponding entry in column(2) of the table provided thereunder and therefore accordingly, the tests qualification is a mandatory requirement under Rule-6 for Excise Inspectors, Assistant Excise Inspectors and Preventive Officers. Viewed in that circumstances also, petitioners were not test qualified and therefore they are not entitled to claim the benefit of sit back. Moreover, Government have realised the mistake and have corrected the same after issuing notice to all the affected parties thereby and therefore by appreciating the entire circumstances involving in this case, we cannot arrive at a different conclusion than the one arrived at by the Administrative Tribunal.

35. Learned Senior Counsel for the additional Respondents has further contended that the Original Petitions are to be dismissed on the sole ground of non-impleadment of necessary parties before the Tribunal as well as in these Original Petitions. Learned Senior Counsel contended that the incumbents in office who are likely to be affected in a

proceeding before a Court of law are entitled to appear in such proceedings as of right and contest the proceedings, which is also a basic principle of natural justice. To the said contention advanced by the learned Senior Counsel appearing for the additional Respondents, learned Senior Counsel for the petitioners contended that if at all any person who is entitled to be in the party array is only the 5th Respondent, since the 5th Respondent has alone challenged the seniority list by filing an application before the Government within the time stipulated and therefore the argument advanced by the learned Senior Counsel for the additional Respondents cannot be sustained in any manner.

36. Learned Senior Counsel for the additional Respondents has invited our attention to the following judgments of the Hon'ble Apex Court in '***Arun Tewari and others v. Zila Mansavi Shikshak Sangh and others***' [AIR 1998 SC 331], '***Siraj v. High Court of Kerala***' [2006 (2) KLT 923 (SC)] and '***Kulwant Singh H.C. and Others v. H.C. Daya Ram and Others***' [(2015) 3 SCC 177]. Learned Senior Counsel has invited our attention to paragraph 12 of the judgment in '***Arun Tewari and others***' (*supra*) and

contended that all the parties likely to be affected by the judgment are entitled to be in the party array. So also, learned Senior Counsel has invited our attention to paragraph 62 in '***Siraj v. High Court of Kerala***' (supra) wherein it was held as follows:

> *"62. The Writ Petitions have also to fall on the ground of absence of necessary parties in the party array. Though the appellants/petitioners contend that they are only challenging the list to a limited extent, acceptance of their contention will result in a total re-arrangement of the select list. The candidates will be displaced from their present ranks, besides some of them may also be out of the select list of 70. It was, therefore, imperative that all the candidates in the select list should have been impleaded as parties to the Writ Petitions as otherwise they will be affected without being heard. Publication in the newspaper does not cure this defect. There are only a specified definite number of candidates who had to be impleaded namely, 70. It is not as if there are a large unspecified number of people to be affected. In such cases, resort cannot be made to R.148 of the Kerala High Court Rules. That Rule can be applied only when very large number of candidates are involved and it may be not able to pin point those candidates with details. In our view, the Writ Petitions have to fail for non-joinder of necessary parties also".*

37. So also, in the judgment in '***Kulwant Singh H.C. and Others'*** (supra) in paragraphs 39, 40 and 41, considered non-impleadment of necessary parties and found that same is vital in the matter of maintainability of the writ petitions itself. We find force in the said contention raised by the learned Senior Counsel for the Respondents. We also take note of the fact that, from the contentions raised in the counter affidavits filed by the Respondents petitioners were very well aware of the group of persons that are likely to be affected consequent to the lists prepared pursuant to Ext.P8 and also Ext.R9(d). To the said contention, learned Senior Counsel for the petitioners has contended that they were not aware of Ext.R9(d) list and therefore petitioners are not duty bound to implead all the said persons who are likely to be affected.

38. Learned Senior Counsel for the petitioners has advanced yet another contention that if at all any person is entitled to get seniority above the petitioners it is the 5th Respondent only, he having challenged the list even though belatedly. The said contention is vehemently opposed by the learned Senior Counsel for Respondents and to canvass contra proposition law, invited our attention to the judgments

reported in '***Gopal Krishna Sharma & Others v. State of Rajasthan & Others***' [1993 Suppl. (2) SCC 375], '***State of Karnataka & Others v. C. Lalitha'*** [(2006) 2 SCC 747] and the judgment in '***K.T.Veerappa & Others v. State of Karnataka & Others'*** [(2006) 9 SCC 406]. In paragraph 11 of '***Gopal Krishna Sharma & Others*** (supra), Hon'ble Apex Court has held that the benefit of Court's order will be available to all Research Assistants/Associates even if not joined as parties thereto. In the judgment in ''***State of Karnataka & Others'*** (supra), in paragraph 29, it was held that service jurisprudence evolved by the Apex Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the Court, that would not mean persons similarly situated should be treated differently. It is furthermore well-settled that the question of seniority should be governed by the Rules. In '***K.T.Veerappa & Others'*** (supra), our attention was invited to paragraph 16 in which it was held that the benefits having been given to 23 employees of the University in compliance with the decision dated 21.06.1989 recorded by the learned Single Judge in the writ petitions, it was expected that without resorting to any of the methods the other employees identically placed, including the appellants, would have been given the same benefits, which would have avoided not only unnecessary litigation but also the movement of files and papers which only waste public time. We find force in the said contention, particularly due to the fact that the petitioners have secured unmerited promotions without acquiring test qualification, at the expense of the qualified incumbents and to their utter disadvantage. Moreover, it cannot be said that the parity of the benefit pursuant to recast of the lists under Ext.P8 is enjoyed by the party Respondents sitting over the fence.

39. Learned counsel for the 5th Respondent and other additional Respondents fully supported the arguments advanced by the learned counsel for the additional Respondents 9 to 18. It was contended by learned counsel, Sri. S.P. Aravindakshan Pillai that petitioners cannot canvass the principle of sit back in view of the frequent challenge made against the list by the 5th Respondent as well as in other Original Petitions, appeals etc. etc. Moreover, learned counsel also contended that without acquiring test qualification

petitioners are not entitled to make claim against the vacancies arose while they were remaining unqualified. learned counsel further contended that the Administrative Tribunal has considered all these contentions raised by the petitioners in accordance with law and therefore the petitioners are not entitled to get any relief in these Original Petitions.

40. Appreciating the cumulative fact situations involved in these Original Petitions, the rule position, the challenge made by Respondent No.5 to the list and other factual and legal situations, we are of the opinion that the Respondents cannot be non-suited by raising the contention that they are not entitled to seniority above the petitioners. Apart from these contentions, learned Senior Counsel for the additional Respondents raised a contention that petitioners have suppressed material facts from the purview of this court. While narrating the facts from the contentions raised by additional Respondents 9 to 18, we have pointed out the exact contention raised by the additional Respondents in that regard. Appreciating the said contentions also, we are of the opinion that the entire gamut of the case and its history was known to the petitioners and therefore the development that took place

at various points of time pursuant to the judgments rendered by this Court was known to the petitioners and in that view of the matter, petitioners should have placed the entire material facts before the Tribunal as well as this Court to evaluate the facts and circumstances legally and correctly. In this regard, learned Senior Counsel for the additional Respondents has invited our attention to the judgment of the Hon'ble Apex Court in '***S.J.S. Business Enterprises Pvt. Ltd. v. State of Bihar and Others***' [(2004) 7 SCC 166] and to paragraph 13 of the judgment, which read thus:

> *"13. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken. Thus when the liability to income tax was questioned by an applicant on the ground of her non-residence, the fact that she had purchased and was maintaining a house in the country was held to be a material fact, the suppression of which disentitled her to the relief claimed. Again when in earlier proceedings before this Court, the appellant had*

> *undertaken that it would not carry on the manufacture of liquor at its distillery and the proceedings before this Court were concluded on that basis, a subsequent writ petition for renewal of the licence to manufacture liquor at the same distillery before the High Court was held to have been initiated for oblique and ulterior purposes and the interim order passed by the High Court in such subsequent application was set aside by this Court. Similarly, a challenge to an order fixing the price was rejected because the petitioners had suppressed the fact that an agreement had been entered into between the petitioners and the Government relating to the fixation of price and that the impugned order had been replaced by another order".*

41. So also, our attention was drawn to the judgment in '***A.M.S. Mannadiar v. State of Kerala***' [1995 (1) KLT 606 (F.B.)]rendered by a Full Bench of this court and specifically to paragraphs 2, 8 and 10 and contended that in view of the material suppression made by the petitioners in the Original Application as well as before this Court, the Original Petitions are liable to be dismissed on that sole ground. We are also of the considered opinion that the legal principles evolved in the judgments of the Apex Court supra have material and substantial application to the facts of this case.

42. Having appreciated the rival contentions made by the parties and perusing the records and in view of the findings rendered by us above, we do not think that the Tribunal has committed any illegality or legal error while dismissing the Original Application filed by the petitioners and disposing of the Original Application filed by the 5th Respondent. Therefore, we find no reason to interfere with the common order passed by the Administrative Tribunal in the transferred Applications.

Resultantly, these Original Petitions fail and they are accordingly dismissed.

Sd/-
K. SURENDRA MOHAN
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-
28.10.2015