

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NOS. 482, 397, 451 AND 663 OF 2015

WRIT PETITION NO. 482 OF 2015

Mr. Menino D' Souza,
Major in age, presently posted
as Commissioner of Excise,
Government of Goa, Old high
Court Building, Panaji-Goa.

... Petitioner

V e r s u s

1. State of Goa,
through its Chief Secretary
with his office at the Secretariat Complex
at Porvorim, Bardez, Goa.
- 1A. Mr. R. K. Srivastava,
Pr. Secretary, (Acting Chief Secretary),
Government of Goa.
With his office at the Secretariat Complex
at Porvorim, Bardez, Goa.
2. Mr. Sandip Jacques,
Presently posted as Executive Director
of the Sports Authority of Goa,
(Government of Goa),
with his office at Myles High Building,
Patto Plaza, Panaji, Goa.
3. Mr. Arun L. Desai,
presently posted as Director of Transport
of the Government of Goa,
Junta-House, Panaji, Goa
4. Mr. N. D. Agarwal,
Since retired on superannuation,
from the service of the Government of Goa,
presently, Chairman, Committee
for Simplification of Procedures,
Secretariat, Porvorim, Goa.
5. Mr. Swapnil Naik,
Major in age, presently posted as
Additional Collector (I),
North, Government of Goa,
Collectorate Building,

Panaji Goa.

6. Mr. Elvis P. Gomes,
presently posted as “Inspector General of Prisons”
Government of Goa,
and resident of 1B/F04 – 'Models-Millennium',
Caranzalem, 403 002 – (Goa)
7. Mr. Sakharam V. Naik,
MD, Industrial Development
Corporation, Government of Goa,
Patto Plaza, Panaji, Goa.
8. Mr. Narayan Sawant,
Registrar of Co-op Societies
Patto, Panaji Goa.
9. Mr. Sanjit R. Rodrigues,
MD, GSIDC, 7th floor, EDC
Building, Panaji, Goa.
10. Mr. Damodar B. Shanke,
Member Secretary, SC/ST/OBC Finance Corporation,
Near KTC bus-stand,
Panaji, Goa.
11. Mr. Sanjiv M. Gadkar,
Additional Secretary (Home)
Government of Goa, Secretariat,
Porvorim, Goa.
12. Yetindra M. Maralkar,
Additional Secretary
(Personnel), Government of Goa,
Secretariat, Porvorim, Goa.
13. Kum. Margaret Fernandes,
Director of Public Grievances
Government Quarters, St. Inez,
Panaji, Goa.
14. Shri Vinesh Arlekar,
CEO, North Goa Zilla
Panchayat, Junta House, Panaji, Goa.
15. Shri Melvyn A. Vaz,
Major in age, presently posted
as Superintendent, Central Jail,
Aguada, Candolim, Goa.

All major.

16. The Goa Public Service Commission,
Through its Member-Secretary,
with its office at the 'EDC' House
Panaji, Goa.
17. The Secretary,
Union Public Service Commissioner
Dholpur House, 'Shahjahan Road',
New Delhi 110 069.
18. Union of India
Through the Secretary,
Ministry of Personnel and Training.
19. Union of India,
through the Secretary,
Ministry of Home Affairs. ... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Mr. C. Padgaonkar, Advocate for the Petitioner.

Mr. D. Lawande, Government Advocate with Mr. P. Dangui, Addl. Government Advocate for the Respondent no. 1.

Mr. Nitin Sardesai, Senior Advocate with Ms. Suzette Pereira, Advocate for the Respondent no. 2.

Mr. D. Pangam, Advocate for the Respondent no. 3.

Mr. A. Kamat, Advocate for the Respondent nos. 9 and 10.

Mr. M. Amonkar, Central Govt. Standing Council for the Respondent nos. 18 & 19.

WRIT PETITION NO. 397 OF 2015

Mr. Swapnil Naik,
Major in age, presently posted as
Additional Collector (I),
North, Government of Goa,
Collectorate Building,
Panaji Goa.

... Petitioner

V e r s u s

1. State of Goa,
through its Chief Secretary
with his office at the Secretariat Complex
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- 1A. Mr. R. K. Srivastava,

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With his office at the Secretariat Complex
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2. Mr. Sandip Jacques,
Presently posted as Executive Director
of the Sports Authority of Goa,
(Government of Goa),
with his office at Myles High Building,
Patto Plaza, Panaji, Goa.
3. Mr. Arun L. Desai,
presently posted as Director of Transport
of the Government of Goa,
Junta-House, Panaji, Goa
4. Mr. N. D. Agarwal,
Since retired on superannuation,
from the service of the Government of Goa,
presently, Chairman, Committee
for Simplification of Procedures,
Secretariat, Porvorim, Goa.
5. Mr. Elvis P. Gomes,
presently posted as “Inspector General of Prisons”
Government of Goa,
and resident of 1B/F04 – 'Models-Millennium',
Caranzalem, 403 002 – (Goa)
6. Mr. Sakharam V. Naik,
MD, Industrial Development
Corporation, Government of Goa,
Patto Plaza, Panaji, Goa.
7. Mr. Narayan Sawant,
Registrar of Co-op Societies
Patto, Panaji Goa.
8. Mr. Sanjit R. Rodrigues,
MD, GSIDC, 7th floor, EDC
Building, Panaji, Goa.
9. Mr. Damodar B. Shanke,
Member Secretary, SC/ST/OBC Finance Corporation,
Near KTC bus-stand,
Panaji, Goa.
10. Mr. Sanjiv M. Gadkar,

Additional Secretary (Home)
Government of Goa, Secretariat,
Porvorim, Goa.

11. Yetindra M. Maralkar,
Additional Secretary
(Personnel), Government of Goa,
Secretariat, Porvorim, Goa.
12. Kum. Margaret Fernandes,
Director of Public Grievances
Government Quarters, St. Inez,
Panaji, Goa.
13. Shri Vinesh Arlekar,
CEO, North Goa Zilla
Panchayat, Junta House, Panaji, Goa.
14. Mr. Menino D' Souza,
Major in age, presently posted
as Commissioner of Excise,
Government of Goa, Old high
Court Building, Panaji-Goa.
15. Shri Melvyn A. Vaz,
Major in age, presently posted
as Superintendent, Central Jail,
Aguada, Candolim, Goa.
All major.
16. The Goa Public Service Commission,
Through its Member-Secretary,
with its office at the 'EDC' House
Panaji, Goa.
17. The Secretary,
Union Public Service Commissioner
Dholpur House, 'Shahjahan Road',
New Delhi 110 069.
18. Union of India
Through the Secretary,
Ministry of Personnel and Training.
19. Union of India,
through the Secretary,
Ministry of Home Affairs.

... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Mr. C. Padgaonkar, Advocate for the Petitioner.

Mr. D. Lawande, Government Advocate with Mr. P. Dangui, Addl. Government Advocate for the Respondent no. 1.

Mr. Nitin Sardesai, Senior Advocate with Ms. Suzette Pereira, Advocate for the Respondent no. 2.

Mr. D. Pangam, Advocate for the Respondent no. 3.

Mr. A. Kamat, Advocate for the Respondent nos. 8 and 9.

Mr. M. Amonkar, Central Govt. Standing Council for the Respondent nos. 18 & 19.

WRIT PETITION NO. 451 OF 2015

Mr. Elvis P. Gomes,
presently posted as "Inspector General of Prisons"
Government of Goa,
and resident of 1B/F04 – 'Models-Millennium',
Caranzalem, 403 002 – (Goa)

... Petitioner

V e r s u s

1. State of Goa,
through its Chief Secretary
with his office at the Secretariat Complex
at Porvorim, Bardez, Goa.
- 1A. Mr. R. K. Srivastava,
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Government of Goa.
With his office at the Secretariat Complex
at Porvorim, Bardez, Goa.
2. Mr. Sandip Jacques,
Presently posted as Executive Director
of the Sports Authority of Goa,
(Government of Goa),
with his office at Myles High Building,
Patto Plaza, Panaji, Goa.
3. Mr. Arun L. Desai,
presently posted as Director of Transport
of the Government of Goa,
Junta-House, Panaji, Goa
4. Mr. N. D. Agarwal,
Since retired on superannuation,
from the service of the Government of Goa,
presently, Chairman, Committee
for Simplification of Procedures,

Secretariat, Porvorim, Goa.

5. Mr. Swapnil Naik,
presently posted as Additional Collector (I),
North, Government of Goa,
with his office at the Collectorate Building,
Panaji Goa. - 403 001.
6. Mr. Sakharam V. Naik,
MD, Industrial Development
Corporation, Government of Goa,
Patto Plaza, Panaji, Goa.
7. Mr. Narayan Sawant,
Registrar of Co-op Societies
Patto, Panaji Goa.
8. Mr. Sanjit R. Rodrigues,
MD, GSIDC, 7th floor, EDC
Building, Panaji, Goa.
9. Mr. Damodar B. Shanke,
Member Secretary, SC/ST/OBC Finance Corporation,
Near KTC bus-stand,
Panaji, Goa.
10. Mr. Sanjiv M. Gadkar,
Additional Secretary (Home)
Government of Goa, Secretariat,
Porvorim, Goa.
11. Yetindra M. Maralkar,
Additional Secretary
(Personnel), Government of Goa,
Secretariat, Porvorim, Goa.
12. Kum. Margaret Fernandes,
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Government Quarters, St. Inez,
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13. Shri Vinesh Arlekar,
CEO, North Goa Zilla Panchayat,
Junta House, Panaji, Goa.
14. Mr. Menino D' Souza,
Major in age, presently posted
as Commissioner of Excise,
Government of Goa, Old high

Court Building, Panaji-Goa.

15. Shri Melvyn A. Vaz,
Major in age, presently posted
as Superintendent, Central Jail,
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All major.
16. The Goa Public Service Commission,
Through its Member-Secretary,
with its office at the 'EDC' House
Panaji, Goa.
17. The Secretary,
Union Public Service Commissioner
Dholpur House, 'Shahjahan Road',
New Delhi 110 069.
18. Union of India
Through the Secretary,
Ministry of Personnel and Training.
19. Union of India,
through the Secretary,
Ministry of Home Affairs. ... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Mr. C. Padgaonkar, Advocate for the Petitioner.

Mr. Vivek Rodrigues, Government Advocate for the Respondent no. 1.

Mr. Nitin Sardesai, Senior Advocate with Ms. Suzette Pereira, Advocate for the Respondent no. 2.

Mr. D. Pangam, Advocate for the Respondent nos. 3 and 8.

Mr. A. Kamat, Advocate for the Respondent no. 9.

Mr. M. Amonkar, Central Govt. Standing Council for the Respondent nos. 18 & 19.

A N D

WRIT PETITION NO. 663 OF 2015

Mr Melvyn A. Vaz,
Major in age, presently posted
as Superintendent, Central Jail,
Colvale, having his office at
Central Jail, Colvale, Goa.

... Petitioner

V e r s u s

1. State of Goa,

by its Chief Secretary
Secretariat
Porvorim, Bardez, Goa.

2. Mr. R. K. Srivastava,
major of age, serving as
Principal Secretary,
(Acting Chief Secretary),
Government of Goa.
Secretariat, Porvorim,
Bardez, Goa.
3. Mr. Sakharam V. Naik,
Major of age, serving as
Managing Director,
The Goa Industrial Development
Corporation, Government of Goa,
Patto Plaza, Panaji, Goa.
4. Mr. Narayan Sawant,
major of age, serving as
Registrar of Co-op Societies
Patto, Panaji Goa.
5. Mr. Sanjit R. Rodrigues,
Major of age, serving as
Managing Director,
Goa State Infrastructure
Development Corporation,
7th floor, EDC Building,
Panaji, Goa.
6. Mr. Damodar B. Shanke,
Major of age, serving as
Member Secretary, S
C/ST/OBC Finance Corporation,
Near KTC bus-stand,
Panaji, Goa.
7. Mr. Sanjiv M. Gadkar,
Major of age, serving as
Additional Secretary (Home)
Government of Goa, Secretariat,
Porvorim, Goa.
8. Yetindra M. Maralkar,
Major of age, serving as
Additional Secretary

(Personnel), Government of Goa,
Secretariat, Porvorim, Goa.

9. Ms. Margaret Fernandes,
Major of age, serving as
Director of Public Grievances
Government Quarters, St. Inez,
Panaji, Goa.
10. Shri Vinesh Arlekar,
Major of age, serving as
Chief Executive Officer,
North Goa Zilla Panchayat,
Junta House, Panaji, Goa.
11. Mr. Sandip Jacques,
major of age, servind as
Executive Director
Sports Authority of Goa,
Myles High Building,
Patto Plaza, Panaji, Goa.
12. Mr. Arun L. Desai,
major in age, serving as
Director of Transport
of the Government of Goa,
Junta-House, Panaji, Goa.
13. Mr. N. D. Agarwal,
retired on superannuation,
from the service of the Government of Goa,
presently serving as Chairman, Committee
for Simplification of Procedures,
Secretariat, Porvorim, Goa.
14. Mr. Swapnil Naik,
Major of age, serving as
Additional Collector (I),
North, Government of Goa,
Collectorate Building,
Panaji Goa.
15. Mr. Elvis P. Gomes,
major of age,
serving as Inspector General of Prisons
Government of Goa,
1B/F04 – 'Models-Millennium',
Caranzalem, Goa. 403 002.

16. Mr. Menino D' Souza,
Major in age, serving as
Commissioner of Excise,
Government of Goa,
Vikrikar Bhavan,
Panaji-Goa.
 17. The Goa Public Service Commission,
Through its Member-Secretary,
with its office at the 'EDC' House
Panaji, Goa.
 18. Union Public Service Commission,
Through its Member Secretary,
Dholpur House, 'Shahjahan Road',
New Delhi.
 19. Union of India
Through the Secretary,
Ministry of Personnel and Training
New Dehi, India.
 20. Union of India,
through the Secretary,
Ministry of Home Affairs
New Delhi.
- ... Respondents

Mr. A. F. Diniz and Mr. Ryan Menezes, Advocates for the Petitioner.
Mr. P. Dangui, Addl. Government Advocate for the Respondent no. 1.
Mr. A. Kamat, Advocate for the Respondent nos. 5 and 6.
Mr. Nitin Sardesai, Senior Advocate with Ms. Suzette Pereira, Advocate for the Respondent no. 11.
Mr. D. Pangam, Advocate for the Respondent no. 12.
Mr. S. D. Lotlikar, Senior Advocate with Mr. C. Padgaonkar, Advocate for the Respondent nos. 14, 15 and 16.
Mr. M. Amonkar, Central Govt. Standing Council for the Respondent nos. 19 & 20.

Coram :- **F. M. REIS,**
 K. L. WADANE, JJ.

Reserved for Judgment on Date : 25th February, 2016
Pronouncement of Judgment on Date : 22nd July, 2016

JUDGMENT : (Per F. M. Reis, J.)

Heard Shri S. D. Lotlikar, learned Senior Advocate appearing for the Petitioner, Mr. D. Lawande, learned Government Advocate appearing for the Respondent no. 1, Mr. Nitin Sardessai, learned Senior Advocate appearing for the Respondent no. 2, Mr. Pangam, learned Counsel appearing for the Respondent no. 3, Mr. Kamat, learned Counsel appearing for the Respondent nos. 9 and 10 and Mr. Amonkar, learned Central Govt. Standing Counsel appearing for the Respondent nos. 18 and 19.

2. These Petitions will be disposed of together as common questions of law and fact are involved in this group of cases which can conveniently be disposed by a common Judgment. The facts are taken from Writ Petition no. 482 of 2015 which by consent has been treated as the lead Petition.

3. The relief is sought in the above Petition, inter alia, challenging the ranking given to Mr. Arun L. Desai, being Respondent no. 3 herein and Mr. N. D. Agrawal, being Respondent no. 4 herein, in the subject Seniority List vide memorandum dated 30.04.2015. The Petitioner also seeks to challenge the select/merit list prepared by the Respondent no. 16 herein which came to be finalised by the Departmental Promotion Committee in the meeting held on 26.11.2004 though selection of promotion of Officers of the Goa Civil Service from Junior Scale to Senior Scale where the Respondent nos. 3 and 4 were placed above the Petitioner in the select/merit list. In connection with the challenge to the select list finalised by the Respondent no. 16 being the competent authority. The

Petitioners have pointed out severe irregularities in the decision making process by the Respondent no. 16. But, however, it is to be noted that though in the Order dated 29.07.2005, the Respondent nos. 3 and 4 were placed above the Petitioner and as the Petitioner raised objections with that regard, a final Seniority List of Junior Officers of Junior Scale Officers was prepared on 20.06.2006 wherein the Petitioner was placed at serial no. 19 above Respondent no. 3 who was placed at serial no. 23 and the Respondent no. 4 at serial no. no. 30. The tentative Seniority List in respect of Officers from serial no. 50 was circulated by Memorandum dated 20.10.2006 so as to make the Seniority List upto date.

4. Briefly, the facts of the case as stated by the Petitioner in the said Petition are that pursuant to a selection and recommendation made by the Goa Public Service Commission, the Respondent no. 16 herein, the Petitioner was appointed as a direct recruit to the Junior Scale of Goa Civil Service by the first Respondent by Order dated 26.12.1997 along with the Respondent nos. 2 and 3. In the Select List, as finalised by the Respondent no. 16, i.e. The Goa Public Service Commission, being the competent authority for such appointment, the Petitioner figured at serial no.4, whereas the Respondent nos. 3 Mr. Arun L. Desai, was placed below the Petitioner at serial no. 5, the Respondent no.4 herein i.e. Mr. N. D. Agarwal, was appointed to the Goa Civil Service in the Senior Scale by promotion and was working in the same Grade since about 1997. It is further their case that on 19.06.2002, the final seniority of all Goa Civil Service Officers were determined vide Office Memorandum dated 19.06.2002. In the said list, the Petitioner was placed at serial no. 20, Respondent no. 3 at Serial no. 25 and Respondent no. 4 at serial no. 41. The Petitioner as well as the Respondent nos. 3 and 4 were

promoted on adhoc basis to the Senior Scale of Goa Civil Services on 25.10.2001. On the recommendation of the Respondent no. 15, the Goa Government promoted various Junior Scale Officers of the Goa Civil Service to Senior Scale of the same service on regular basis including Respondent nos. 2, 3 and 4 herein. However, in the said list, the Petitioner was placed at serial no. 6 in the said list and the Respondent nos. 2, 3 and 4 were placed higher than the Petitioner at serial nos. 1, 2 and 3. Realising that the said Order dated 29.07.2005 sought to alter the seniority which had already been finalised vide Order dated 19.06.2002, the Petitioner along with other aggrieved Officers, took up the matter before the Department of Personnel objecting to the said Regularization Order dated 29.07.2005. Thereafter, vide memorandum dated 20.06.2006, final seniority list of Junior Scale Officers of the Goa Civil Service was determined. The Petitioner could have had no grievance about the said Seniority list as he was placed above the Respondent nos. 3 and 4. A Memorandum dated 20.11.2006 was also issued and the tentative seniority in respect of the Officers at serial no. 50 of the said list was circulated so as to bring the seniority list up to date. The Petitioners also had no grievance with regards to the said list as it continued to be placed above the Respondent nos. 3 and 4. The seniority was finally determined in accordance with the aforesaid Memorandum and continued to be in force for the next few years until all of a sudden the same was purported to be re-opened vide Memorandum dated 26.06.2009, which according to the Petitioner was circulated again and the tentative Seniority List of all Senior Scale Officers of the Goa Civil Service was prepared. In the seniority list, according to the Petitioner, he was attempted to be placed below the Respondent no. 2 at serial no. 1, Respondent no. 3 at serial no. 2 and Respondent no. 5 at serial no. 3. Vide representation dated 14.07.2009, the

Petitioner submitted his objection to the said seniority list requesting that the said list be withdrawn immediately and the original seniority confirmed. However, in flagrant breach of the aforesaid Office Memorandums and all objections raised, a new final seniority list of Senior Scale Officers of Goa Civil Service was determined as circulated vide Office Memorandum dated 28.04.2010. In the seniority list, the Petitioner was placed below the Respondent nos. 2, 3 and 4 who are respectively placed at serial nos. 1, 2 and 3. The Petitioner thereafter again took up the matter before the Chief Secretary bringing to his notice the confusion created by issuing a separate list of Senior Scale Officers in addition to the finalised seniority list of the Civil Cadre which was in force from the year 2006. Thereafter, Memorandum dated 28.03.2011 was issued circulating a tentative Seniority of the Junior Administrative Grade Officers of Goa Civil Service. In the said Memorandum the Petitioner was placed below the Respondent nos. 2, 3 and 4 respectively. The Petitioner thereafter addressed a letter dated 07.04.2011 stating that the Petitioner had raised his objections to the tentative seniority list of the Senior Scale Officers and had represented to the Chief Secretary and the Chief Minister against the final seniority list. A detailed representation was submitted by the Petitioner on 21.04.2011 and 21.05.2012 to the said tentative seniority list dated 28.03.2011. The Petitioner also addressed a letter dated 12.08.2010 to the Chief Secretary, Government of Goa stating that the Cadre Seniority has always been one single list. Thereafter, on 16.05.2011, the Petitioner along with Respondent nos. 2, 3 and 4 were promoted on adhoc basis from the Administrative Grade of the Goa Civil Service to the Selection Grade of the same service vide Order dated 16.05.2011. In the meanwhile, a colleague of the Petitioner Shri Elvis Gomes in Writ Petition no. 451 of 2015, challenged the impugned Seniority List in Court and for this purpose sought

information under Right to Information Act to furnish a copy of the DPC Minutes, relating to the recommendation for promotion of Officers of the Junior Scale of the Goa Civil Service. Vide Communication dated 23.05.2011, the Goa Public Service Commission furnished copies of the relevant Minutes of the DPC proceedings held on 26.11.2004. Thereafter, somewhere in March, 2012, the said Mr. Elvis Gomes, the Petitioner in Writ Petition no. 451 of 2015, filed Writ Petition no. 365 of 2012 before this Court and the Petitioner was added Respondent to the said Writ Petition. A Memorandum dated 01.10.2012 was issued withdrawing the seniority list dated 28.04.2010 with immediate effect as also subsequent seniority list issued in respect of Junior Administrative Grade Officers. Thereafter, in respect of the Petitioner by Memorandum dated 09.11.2012, a tentative seniority list of Goa Senior Scale Officers of the Goa Civil Service was circulated inviting objections. In the said tentative seniority list, the Petitioner was placed at serial no. 6, Respondent no.3 at serial no. 2 and Respondent no. 4 at serial no. 3. The Petitioner vide letter dated 26.11.2012, prayed for an extension of time to file detailed objections and such objections were raised vide letters dated 07.12.2012 and 13.12.2012. It is further the contention of the Petitioner that on 16.01.2013, the learned Advocate General, in the said Writ Petition no. 368 of 2012, submitted that the seniority list dated 28.04.2010 has been withdrawn by letter dated 01.10.2012 and further submitted that process of preparing new seniority list, after calling upon for objections from the concerned persons, had already started. In view of the said statement of the learned Advocate General, the Petitioner therein Mr. Elvis Gomes, sought leave to withdraw the Writ Petition no. 368 of 2012 with liberty as prayed for. The Writ Petition was disposed of keeping all the contentions open. It is further the contention of the Petitioner that by Memorandum dated 18.02.2013, another

tentative seniority list of the Goa Civil Service Officers was circulated and objections were requested to be submitted to the said tentative seniority list dated 18.02.2013. The Petitioner was placed at serial no. 12 above the Respondent no. 3 at serial no. 16 and Respondent no. 4 at serial no. 22. The Petitioner had no grievance with regard to his placement in the said tentative seniority list dated 18.02.2013 as he was placed at serial no. 9 above the Respondent nos. 3, 4 and 5 who were placed at serial nos. 11, 16 and 22 respectively. After considering the objections received on the said tentative seniority list dated 18.02.2013, by a Memorandum dated 24.06.2014, the final seniority list of the Officers of the Goa Civil Service was determined. In the said final seniority list dated 24.06.2014, the Petitioner was placed at serial no. 13 above Respondent no.2 (Serial no. 18), Respondent no. 3 (Serial no. 23) and Respondent no. 4 (Serial no. 30). It is further the contention of the Petitioner that all of a sudden, a Memorandum dated 19.08.2014 came to be issued purporting to review/revise the earlier final seniority list dated 24.06.2014. In the said Memorandum, the Petitioner was placed below the Respondent no. 4 (Serial no. 15) and Respondent no. 5 (Serial no. 18). Aggrieved by his placement in the Memorandum dated 19.08.2014, below the Respondent nos. 3 and 4 herein, Mr. Arun L. Desai and N. D. Agarwal and also the Select/Merit List as finalised by the Department of Promotion Committee in its Meeting held on 26.11.2004, was challenged by the Petitioner Mr. Elvis Gomes by filing a Writ Petition bearing Writ Petition no. 547 of 2014 in this Court wherein the Petitioner was arrayed as the Respondent. The Government and the Respondent nos. 2, 3 and 4 were also parties to the said Writ Petition. It is further the contention of the Petitioner that when the Petition came up for consideration before this Court a statement was made on behalf of the Government of Goa by the learned Advocate General that

the Government was looking into the grievances made by the Petitioner in the said Writ Petition and he would report back to the Court. It is further their case that when the matter came up on 12.11.2014 for hearing, an Order was placed before the Court dated 12.11.2014, purporting to supercede the Memorandum dated 19.08.2014 which was challenged in the said Writ Petition as a tentative seniority list of the Senior Scale Officers of the Goa Civil Service and inviting objections, if any, from the Officers appearing in the said list. Another Order dated 12.11.2014 was produced by the Government stating that the final seniority of Goa Civil Service Officers circulated vide Memorandum dated 24.06.2014 shall be treated as the final seniority of the Junior Scale Officers of the Goa Civil Service, thereupon, the Petition came to be disposed of. It is further the contention of the Petitioner that the Petitioner submitted objections to the tentative Seniority List dated 19.08.2014 to the Chief Secretary. But, however, on 27.02.2015, a report was submitted by the Principal Secretary then officiating as the Chief Secretary which was accepted by the Government on 18.04.2015. It was further the contention of the Petitioner that the Government issued the impugned Memorandum on 30.04.2015 whereby the Government accepted that the Senior Scale Officers who were appointed to the Goa Civil Service not later than 1998 shall be as stated in the Memorandum dated 30.04.2015. It is further the contention of the Petitioner that by the said impugned Memorandum, the Petitioner has been placed at serial no. 21 below the third Respondent who has been placed at serial no. 15 and the fourth Respondent who has been placed at serial no.16.

5. Being aggrieved by the said decision and the seniority list, the Petitioners have filed the above Petitions, inter alia, seeking to quash and set aside

the impugned Selection Merit List as finalised by the Goa Public Service Commission on 26.11.2004 and also for a writ to quash and set aside the Memorandum dated 30.04.2015 issued by the Under Secretary (Personnel-II) determining the seniority list and further directing the Respondent nos. 1, 16 and 17 to desist from acting contrary to the Seniority List finalised vide Memorandum dated 19.06.2002 bearing no. 5-7-99-PER (Vol.I), 20.06.2006 bearing no. 5/8/2003-PER dated 20.10.2006 and bearing no. 6/8/2014-PER dated 24.06.2014 and that such Memorandum be treated as final seniority list. During the pendency of the Petition, the Petition was also amended to seek relief, inter alia, directing the Respondent no. 1 to recall the communication dated 12.06.2015 addressed by the Department Personnel, Government of Goa to the Secretary, Union Public Service Commission.

6. Shri S. D. Lotlikar, learned Senior Advocate appearing for the Petitioner, has submitted that the challenge in the above Petition is to the Memorandum issued by the Under Secretary (Personnel) dated 30.04.2015 determining the Seniority List. It is further pointed out that the Petitioner was appointed pursuant to an Order dated 26.12.1997 on probation under Rule 5(a) of the Goa Civil Rules 1997 w.e.f. 09.01.1998, and that the Seniority List of the Goa Civil Officers was prepared and circulated for objections on 19.06.2002 and in the said list, the Petitioner is placed at serial no. 20, the Respondent no. 3 at serial no. 25 and the Respondent no. 4 at serial no. 41. The learned Senior Advocate further submits that thereafter on 29.07.2005, on recommendations of the Respondent no. 16, the Government promoted various Junior Officers from Junior Scale to Senior Scale of the same service on regular basis, but, however, the Petitioner was placed at serial no, 6 and the Respondent nos. 2, 3 and 4 were placed higher than the

Petitioner at serial nos. 1, 2 and 3. The said Order dated 29.07.2005 was objected to by the Petitioner by filing the objections before the Department of Personnel and that thereafter on 20.06.2006 a Seniority List of Junior Scale Officers of the Goa Civil Service were determined and that the Petitioner was placed at serial no. 19 and the Respondent no. 3 at serial no. 23 and the Respondent no. 2 at serial no. 18. The learned Senior Advocate further points out that the Petitioner could not have any grievance to the said Seniority List as he was placed above the Respondent nos.3 and 4. The learned Senior Advocate further points out that the Petitioner had no grievance to the Memorandum dated 20.10.2006, whereby the tentative Seniority List in respect of the Officers from serial nos. 50 of the said list, was circulated. It is further pointed out that this seniority was in force for quite a few years until all of a sudden, the same was being re-opened by a Memorandum dated 26.06.2009 which purported to circulate the tentative Seniority list of the Senior Scale Officers. It also submitted that vide representation dated 15.07.2009, the Petitioner submitted his objection to the said tentative Seniority List, inter alia, requesting that it be withdrawn and that the earlier one prepared on 20.06.2006 and 20.10.2006 be restored. It is further submitted that in flagrant breach of all objections, a new final Seniority List of Senior Scale Officers, Goa Civil Service was determined by Circular dated 28.04.2010 whereon, the Petitioner raised the grievance before the Chief Secretary with that regard. It is further pointed out that thereafter on 28.03.2011, another tentative Seniority List was circulated of Junior Administrative Scale Officers wherein the Petitioners were placed above the Respondent nos. 2, 3 and 4. It is further submitted that a detailed representation was submitted by the Petitioner objecting to the said list. It is further pointed out that another colleague of the Petitioner, namely Elvis Gomes, who was similarly

placed, challenged the said Seniority List in this Court. During the course of filing of such Petition, information was sought from the Goa Public Service Commission with regard to the copies of the DPC Minutes which were furnished on 23.05.2011. The Petitioner further pointed out that the said Elvis Gomes filed Writ Petition no. 368 of 2012, wherein the Petitioner was also one of the Respondents and thereafter a Memorandum was issued withdrawing the Seniority List dated 28.04.2010 with immediate effect. It is further pointed out that the Seniority List was prepared on 09.12.2012 inviting objections and the Petitioner was placed at serial no, 6; whereas the Respondent no. 3 at serial no. 2 and the Respondent no. 4 at serial no. 3. It is also pointed out that in January, 2013, it was pointed out in Writ Petition no. 368 of 2012 on behalf of the State Government, that Seniority List dated 28.04.2010 has been withdrawn and a new Seniority List was being prepared and, consequently, the Petition came to be withdrawn with liberty, keeping all contentions open. Thereafter, another Seniority List was prepared on 18.02.2013 and objections were invited. In the said tentative Seniority List, the Petitioner was placed at serial no, 12 above the Respondent nos. 3 and 4, wherein the Petitioner had no grievance to such list. The final Seniority List was thereafter determined by Order dated 24.06.2014 whereby the Petitioner was placed at serial no.13 above the Respondent nos. 2, 3 and 4. The learned Senior Advocate further pointed out that though the said Seniority List was finalised all of a sudden on 19.08.2014, a Memorandum dated 19.08.2014 came to be issued of review/revise earlier final Seniority List whereby the Petitioner was placed below the Respondent nos. 4 and 5. It is further pointed out that there was no scope to prepare a fresh Seniority List when the Seniority List was already finalised by the State Government. We, thereafter, were taken through the Goa Government Seniority Rules of 1967,

wherein Rule 3 provides that persons appointed in a substantive or officiating capacity to engrave prior to the enforcement of these Rules shall retain th relative Seniority already assigned to them. The learned Senior Advocate further points out that under the Goa Civil Service Rules 1997, Rule 3 of the Goa Civil Service Rules 1997 provide that the services shall have four grades namely Selection Grade, Junior Administrative Grade, Senior Scale and Junior Scale and that Sub-rule (2) or (3) provides that all posts in the above Grade shall be “Goa Civil Service Post Group A Gazetted” and, as such, according to him, the Seniority of the Goa Civil Service would be as determined of all the said Officers. We have been thereafter taken through the objections to the Seniority List to point out that the Seniority List of Goa Civil Service Officers should not have been touched as in organised service, the Seniority List at the time of recruitment is sacrosanct and should continue till the Officers retired. It has further been pointed out that there are also objections raised with regard to the grading of the Officers by the DPC and the GPSC was irregular and illegal in ignoring the guidelines on the subject as it had gone entirely on the basis of the remarks in the confidential report and had not made assessment of the confidential reports at all. The learned Senior Advocate has thereafter pointed out that different objections raised by the Petitioner and the other similarly placed Officers to the exercise to review the Seniority List but however all these contentions were not even considered while passing the impugned decision preparing the disputed Seniority List. The learned Senior Advocate had thereafter taken us through the impugned decision to point out that it is recorded therein that the three member Committee consisting of Parimal Rai, Member Secretary and two others had dealt with at length a number of issues concerning the seniority and promotion of Goa Civil Service Officers wherein it has been recorded that a

separate Seniority List has to be prepared and maintained in each and every grade of Goa Civil Service Officers. It is further pointed out that it is also noted that the Seniority List prepared by Memorandum dated 20.10.2006 is indisputably the list of Junior Scale Service Officers which will remain undisturbed. It is also submitted that it is also recorded therein that the seniority once finalised, normally, should not be disturbed. The learned Senior Advocate has thereafter taken us through the discussions in the impugned decision to point out that the decision is misconstrued as the relevant provisions of the Rules as well as the criteria for Seniority which was already accepted by the State Government have been erroneously changed. It is further pointed out that the Principal Secretary was not even called upon to prepare such seniority list when it was incumbent upon the Chief Secretary as directed by the Chief Minister to prepare the seniority list on his own. It is further pointed out that merely because the Principal Secretary was officiating Chief Secretary for sometime, during the said period, would not entitle the Principal Secretary to prepare the Seniority List when at the relevant time, the incumbent Chief Secretary was in place and when the report was submitted there was a full fledged Chief Secretary available. It is further submitted that there is no reason to change the Seniority list which was already accepted and finalised by the State Government in the year 2014 and that the report prepared by the Principal Secretary is not in accordance with the directions issued as found at page 243 of the paper book. The learned Senior Advocate has thereafter taken us through the objections by letter dated 07.12.2012 and 13.12.2012 to point out that such objections were tenable and in fact accepted by the Respondents. The learned Senior Advocate has thereafter taken us through The Indian Administrative Service (Regulation of Seniority) Rules, 1987 to point out that as per Rule 3 (ii) and

submitted that the year of allotment of a promotee Officer shall be determined with reference to the year on which the meeting of the Committee to make selection, to prepare the select list on the basis of which he was appointed to the Service, was held and with regard to the continuous service rendered by him in the State Civil Service not below the rank of a Deputy Collector or equivalent, up to the 31st day of December of the year immediately before the year for which meeting of the Committee to make selection was held to prepare the select list. It is as such pointed out that this itself shows that the seniority governed for the purpose of promotion to the IAS is based on the seniority in the rank of the Deputy Collector. It is as such pointed out that the seniority has to be determined as per the seniority in the rank of the Deputy Collector. The learned Senior Advocate has taken us through The Indian Administrative Service (Appointment by Promotion) Regulations of 1955 and pointed out that the definition of the word 'State Civil Service' also includes the Goa Civil Service and taken us through Regulation 5 to point out that Regulation 5(2) provides that the Committee shall consider the inclusion to the said list, the cases of members of the State Civil Services in the order of a seniority in that service of a number which is equal to three times the number referred in sub-regulation (1). Taking us through such proviso, it is pointed out that it clearly stipulates that the Committee shall not consider the cases of a member of the Goa Civil Service unless on the first day of January of the year for which the Select List is prepared, he has a substantive post in the State Civil Service and has completed not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Collector or in any other post or posts declared equivalent thereto by the State Government. It is further pointed out that this itself suggests that the seniority in the rank of Deputy Collector would govern to be included in the

Select List. It is thereafter pointed out that in the present case, the State Government based on erroneous and illegal Seniority List prepared by the Principal Secretary has submitted the Select List which is contrary to the Rules and Law. It is further submitted that the Seniority as per the Junior Scale Officers as accepted by the Government in the year 2014 ought to have been included in the Select List to be absorbed in IAS. It is further pointed out that the relevant Seniority in the service is on the basis of the initial entry in the post of Deputy Collector and, as such, the name of the Petitioner ought to have been included being above the Respondent nos. 3 and 4. It is further pointed out that the said Regulations itself provides that induction into IAS is on the basis of the seniority to the substantive post of Deputy Collector or its equivalent post and, as such, the year of the appointment to such service would govern the initial seniority for such appointment to such post would govern the seniority. The learned Senior Advocate as such pointed out that the impugned decision prepared by the Principal Secretary deserves to be quashed and set aside.

7. Shri Diniz, learned Counsel appearing for the Petitioner in Writ Petition no. 663 of 2015, has submitted that the first Seniority List was prepared on 19.06.2002 and that there is total non-application of mind by the Principal Secretary while preparing the Seniority List. Learned Counsel further pointed out that the Seniority List prepared on 24.06.2014 was accepted by the Government as the final Seniority List of the Officers of the Goa Civil Service and there was no reason to re-open such final Seniority List when no Officer had challenged such seniority before any Court. It is further pointed out that the Principal Secretary was not justified to overrule the acceptance by the Government or the final Seniority List prepared on

24.06.2014. It is further pointed out that the GPSC meeting had not followed the guidelines whereby the CRs were not available to assess before submitting the report of the relative merits of the Junior Scale Officers entitled to be promoted. Learned Counsel further pointed out that once the Petitioner and the Respondents were initially appointed in the same selection process and at the time of their promotion once they had attained the benchmarks, the seniority would be governed as per the seniority in the Junior Scale Officers. Learned Counsel as such submits that the impugned Seniority be quashed and set aside.

8. On the other hand, Shri Nitin Sardesai, learned Senior Advocate appearing for the Respondent no. 2, has pointed out that the Petition is barred by laches due to gross delay. It is further pointed out that the promotions to the Senior Scale Officers were granted in the year 2006 and the Petition is filed in the year 2015 and on account of such gross delay itself, the Petition deserves to be rejected. It is further pointed out that the promotions were granted based on the recommendation of the GPSC which are sought to be challenged only in the year 2015. It is further pointed out that accepting the contentions of the Petitioner would result in persons who are not meritorious would be higher than persons who are meritorious. It is further pointed out that the most meritorious person has to be the senior most in the Civil Service and, in the present case, the Respondent no. 1 was found meritorious whilst being promoted as a Senior Scale Officer and is entitled to maintain his seniority. Learned Senior Advocate has thereafter taken us through the decision and report of the Principal Secretary to point out that this report has been accepted by the State Government and this Court cannot sit in Appeal to the decision of the State Government to accept the report. It is further

pointed out that the contention of the Petitioner that the seniority has to be governed on the basis of the seniority of the initial entry to the Junior Scale Officer is totally unfounded as the seniority is to be governed on the basis of the Senior-most in the highest rank in service. The learned Senior Advocate has substantially taken us through the pleadings to point out that on the ground of laches itself, the Petition deserves to be rejected. It is also submitted that it is well settled that the seniority is governed by Rules and in absence thereof, by O.M. In support of his submission, the learned Senior Advocate has relied upon the Judgments reported in **(1973) 2 SCC 836** in the case of **Union of India Vs. Mohan Lal Capoor and ors.** and **1986(4) SCC 531** in the case of **K. R. Mudgl and Ors. vs. R. P. Singh & Ors..**

9. Shri Pangam, learned Counsel appearing for the Respondent no. 3, has pointed out that the recommendations of the year 2006 by the GPSC were not challenged by the Petitioners until the filing of the present Petition and, as such, such recommendations cannot be interfered. The learned Counsel further pointed out that based on such recommendations, the Petitioners have been further promoted to Administrative Grade and Selection Grade and, as such, the question of interfering in such exercise is totally unjustified. The learned Counsel further pointed out that the Petition is barred by laches and delay and it is not open for this Court to interfere in such decision which was taken way back in the year 2006. Learned Counsel further submits that the Petitioners are invoking the provisions of the Indian Administrative Services Rules of 1987 to interpret the Goa Civil Rules which is not permissible. Learned Counsel further pointed out that the Petitioners are not entitled for any reliefs as it is well settled that the most meritorious person has to be considered for being inducted into Indian Administrative Service.

10. Shri Lawande, learned Government Advocate appearing for the Respondent no. 1, has pointed out that the Petition is barred by laches. The learned Government Advocate submits that there is no need of giving reasons for supersession as contended by the Petitioner and in support of the said submission has relied upon the Judgment of the Apex Court reported in **1995 Supp (1) SCC 434** in the case of **Sarat Kumar Dash & Ors. vs. Biswajit Patnaik & Ors.** Learned Government Advocate further pointed out that the Rules of 1967 apply for governing the seniority and there is nothing shown that they do not apply to govern the seniority as they have been prepared in terms of Article 309 of the Constitution of India. Learned Government Advocate further pointed out that the question of interfering in the DPC meeting recommendations of the year 2004 at this stage, would be totally unjustified. Learned Government Advocate further pointed out that the decision arrived at by the Principal Secretary was when he was officiating and, as such, there can be no grievance of the Petitioner that he was not authorised to prepare the seniority list. Learned Government Advocate further pointed out that in view of the objections raised by some Officers, the State Government was justified to direct the Chief Secretary to prepare the Seniority List which has been duly prepared and accepted by the State Government. Learned Government Advocate further pointed out that the contention of the Petitioner that the seniority has to be governed as per the initial entry, is totally farfetched and deserves to be rejected. Learned Government Advocate further submits that the Principal Secretary has minutely examined all the aspects while coming to the conclusion therein. In support of his submission, the learned Government Advocate has relied upon the Judgment of the Apex Court reported in **(1996) 2 SCC 488** in the case of **Nutan**

Arvind (Smt) vs. Union of Indian & anr. The learned Government Advocate further points out that when the promotion is on the basis of merit cum suitability, seniority has no role to play and in support thereof has relied upon the Judgment of the Apex Court in the case of **Sarat Kumar Dash & Ors. vs. Biswajit Patnaik & Ors.** (supra). The learned Government Advocate further pointed out that an Officer superseded by a Junior on merits is not entitled to claim seniority. The learned Government Advocate has also relied upon the Judgment of the Apex Court reported in **1986 (Supp) SCC 617** in the case of **R. S. Dass vs. Union of Indian & Ors.** in support of his contention that no reasons are required to be given. The learned Government Advocate has also relied upon the judgment of the Apex Court reported in **AIR 1974 SC 87** in the case of **Union of India vs. M. L. Capoor & Ors.** in support of his submission. The learned Government Advocate further pointed out that the promotions have to be effected strictly in terms of the Rules and in support thereof as relied upon the Judgment of the Apex Court reported in **(2011) 7 SCC 789** in the case of **Jagdish Prasad vs. State of Rajasthan & Ors.** The learned Government Advocate further pointed out that the seniority in a particular grade based on the entry into such grade is the normal Rule of promotion. In support thereof he has relied upon the Judgment of the Apex Court reported in **(2010) 15 SCC 752** in the case of **Union of India & Ors. vs. C. Jayaprakasan.** The learned Government Advocate has also relied upon the Judgment of the Apex Court reported in **(2009) 5 SCC 515** in the case of **K. A. Nagamani vs. Indian Airlines & Ors.** The learned Government Advocate has further pointed out that the notings in the Department file did not have the sanction of law, to be an effective Order and in support thereof relied upon the Judgment of the Apex Court reported in **(2009) 1 SCC 180** in the case of **Sethi Auto Service Station & anr. vs. Delhi**

Development Authority & Ors. Learned Government Advocate as such pointed out that the Petition be rejected.

11. Shri P. A. Kamat, learned Counsel appearing for the Respondent nos. 9 and 10, has relied upon the Judgment of the Central Administrative Tribunal in O.A. Nos., 2612/2008 and 3393/2013 in the case of **Vimal Chandra Pandey vs. Union of India & Ors.** and adopted the submissions of the learned Counsel appearing for the Respondents.

12. In reply to the said contention, Shri S. D. Lotlikar, learned Senior Advocate appearing for the Petitioner, has pointed out that the Principal Secretary was incompetent to hear the objections when the Chief Secretary was in place and, as such, the impugned decision is without any sanction in law. It is further pointed out that the persons who were authorised to hear the objections have not considered the objections raised by the Petitioner. It is further pointed out that the seniority list which was settled was sought to be disturbed for the first time in the year 2009 which was thereafter withdrawn by the Government and, as such, the contention that the Petition is barred by laches is totally erroneous and without any substances. It is further pointed out that even in June, 2014, the final seniority which was accepted was sought to be reviewed illegally only thereafter and, as such, the contention of the Respondents that the Petition is barred by laches cannot be accepted. The learned Senior Advocate as such points out that the Petitioner is entitled for the reliefs sought in the Petition.

13. Considering the rival contentions and the records with the assistance of the learned counsel appearing for the respective parties, the undisputed facts which emerge are that there was a seniority list duly settled which came to be finalized on 20.06.2006. This seniority list was sought to be disturbed thereafter and in view of the petitions preferred before this Court, the new list was withdrawn and ultimately, the records reveal that the seniority which was settled on 24.06.2014 was again being disturbed by the impugned seniority list prepared on 30.04.2015. In order to examine the rival contentions and whether the action of the respondents to alter the seniority list is justified, we would keep in mind the observations of the Apex Court in the judgment reported in **AIR 2003 SC 2000** in the case of **Bimlesh Tanwar V/s State of Haryana and others** wherein it has been observed at paras 46 and 49 thus :

“46. Seniority is not a fundamental right. It is merely a civil right. Inter se seniority of the candidates who are appointed on the same day would be dependent on the rules governing the same. Only in absence of any statutory rules, the general principles may be held to be applicable.

49. In this case also, although there does not exist any statutory rule but the practice of determining inter se seniority on the basis of the merit list has been evolved on interpretation of the Rules. A select list is prepared keeping in view the respective merit of the candidates. Not only appointments are required to be made on the basis of such merit list, seniority is also to be determined on that basis as it expected that the candidates should be joining their respective posts almost at the same time. Yet again in *Chairman, Puri Gramya Bank & Anr. vs. Ananda Chandra Das & Ors.* [1994(6) SCC 301] this court held:

"It is settled law that if more than one are

selected, the seniority is as per ranking of the direct recruits subject to the adjustment of the candidates selected on applying the rule of reservation and the roster. By mere fortuitous chance of reporting to duty earlier would not alter the ranking given by the Selection Board and the arranged one as per roster. The High Court is, therefore, wholly wrong in its conclusion that the seniority shall be determined on the basis of the joining reports given by the candidates selected for appointment by direct recruitment and length of service on its basis."

14. In another Judgment of the Apex Court reported in ***AIR 1977 SC 161*** in the case of ***Union of India vs. R. D. Nanjiah*** it has been observed at para 7 thus:

"..... All that is done is that certain principles are applied in the preparation of the list. These principles are generally found in the rules or executive directions which are known to or are capable of being found out by the persons affected. When a provisional seniority list is prepared, there is a possibility of some mistakes occurring about the facts of a case or in the application of those rules. It would, therefore, be quite fair to give a person affected an opportunity to be heard against the proposed list before it is finalised so that any possible mistakes, either on facts relating to his particular case or of law in applying the rules governing seniority to those facts, may be rectified.

But, once he has had that opportunity, it cannot possibly be said that he should have a further opportunity against even a final seniority list. If he was to have that opportunity the list would not really be final but only provisional or preliminary. It will be obviously contradictory to hold it to be a final list and yet declare it subject to modifications on further objections. We are unable to find any rule of natural justice having such a paralyzing scope.”

15. The Apex Court in another judgment reported in **AIR 1977 SC 1866** in the case of **Union of India V/s A. Gopalakrishna Nayak and others**, has observed at para 6 thus :

“6. It is thus plain that Shankariah's case (1965) 2 Mys LJ 40 cannot be of any assistance to the first respondent. Here we have a final list, not a provisional one. Here the party affected has been heard and the Central Government has decided and therefore there is no meaning in affording a second opportunity to be heard or to make representations. In this view we set aside the decision of the Karnataka High Court and allow the appeal.”

16. The observations referred to herein above, clearly reveal that a settled seniority position should not be unsettled unless for very specific and compelling reasons. It is also now well settled that when the parties affected are given an opportunity to raise their objections and of being heard and thereafter, the Government has finalized the seniority list, there is no room to give a second opportunity of being heard or allow a representation objecting to such finalized

seniority list of the concerned employees.

17. In the present case, the petitioner herein was selected and recommended by the GPSC for appointment as a direct recruit to the Junior Scale of Goa Civil Services by order dated 26.12.1997 along with the respondent nos. 2 and 3 and others. The select list as finalized by the respondent no.16 discloses that the petitioner was at serial no.4 whereas the respondent no.3 Arun Desai was placed below the petitioner at serial no.5 and Sandip Jacques, the respondent no.2 at serial no.3. Rule 5 of the Goa Government (Seniority) Rules, 1967 provides that notwithstanding the provisions of Rule 4, the relative seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointment on the recommendation of the Goa Public Service Commission or other Selection Authority. The person appointed by the earlier selection being senior to those appointed as recruits in the subsequent selection. In such circumstances, the seniority fixed at the time of recruitment of the petitioner cannot be faulted as the seniority was based on the recommendation of the commission and in compliance of Rule 5 referred to above.

18. In terms of Rule 3 of the Goa Civil Service Rules, 1997, the service shall have four grades namely a Selection Grade, Junior Administrative Grade, Senior Scale and Junior Scale and sub Rule 2 provides that all the posts of such grades shall be the Goa Civil Service Posts, Group 'A' Gazetted include the posts in Selection Grade, Junior Administrative Grade, Senior Scale and Junior Scale taken together which shall generally not exceed 20% of the authorised permanent strength of the service. This clearly reveals that the Goa Civil Service Group A

would cumulatively include all the aforesaid four grades.

19. Mr. Lawande, learned Government Advocate appearing for the respondents has pointed out that in view of Rule 6 of the Goa Government (Seniority) Rules, 1967, the seniority would be in the order of select list in the order of selection for such promotion and as such according to him as the respondent nos. 2 and 3 were above the petitioner herein, the seniority of the service would be altered. Rule 19 of the Goa Civil Service Rules, 1997, enacted in exercise of powers conferred under Article 309 of the Constitution of India, clearly provides that the relative seniority of direct recruits and on promotion shall be determined in accordance with the provisions of the said Seniority Rules, 1967. The provisions of the said Rules can be applicable only for the purpose of examining the seniority between the direct recruit and promotee and not seniority inter se of such promotees. Rule 21 of the said Goa Civil Service Rules, 1997 provides that the promotion of the member of the service to Senior Scale shall be made in consultation with the Commission on the basis of merit with due regard to the seniority. It does not provide that the original seniority in service would be altered based on such recommendation when, admittedly, the petitioner along with the respondent nos. 2 and 3 and all the petitioners were promoted to the Senior Scale in the same selection process and on the same date. There is nothing to suggest that separate seniority lists have to be prepared after promotion to the Senior Scale. Hence, the seniority which was determined at the time of the initial appointment of the petitioner and others has also to be considered at the time of promotion to the Senior Scale, provided they meet the merit criteria. In the present case, there is also a challenge to the merit list prepared by the Commission in

terms of Rule 21 of the said Rules of 1997 which shall also be examined herein below.

20. In fact, a seniority list was prepared of the Goa Civil Service in the year 2002 and the petitioner and others did not have any grievance to such seniority list. This was a final seniority list of all Goa Civil Service Officers and notified in the Office Memorandum. In such list the petitioner is placed at serial no.30, the respondent no.3 at serial no.35, the respondent no.4 at serial no.45 and respondent no.5 at serial no.50.

21. It would however be pertinent to note that a final seniority list of the Junior Scale Officer of the Goa Civil Service was prepared by the respondents on 20.06.2006. This list was prepared after it was duly circulated to the concerned Officers. Thereafter, by Memorandum dated 20.10.2006, the names of the officers who had retired from service or promoted to IAS Cadre post have been deleted from the finalised seniority list and the tentative seniority in respect of the remaining Officers from 50 onwards was circulated to bring the seniority list up-to-date. It would be pertinent to note that at that relevant time, apparently, the names of the IAS Officers who had already been promoted also figured in the final seniority list of the Junior Scale Officers. It would also be material to note that even though the Petitioners and Respondent nos. 2, 3 and 4 were already promoted to Senior Scale, they still continued to figure in such final seniority list which was duly approved. The Petitioners accepted the said final Senior List which was duly notified. Though, the seniority list was duly finalized and accepted by the concerned employees, it was sought to be reopen in the year 2009 by preparing a tentative list

of Senior Scale Officers. The Rules which govern the service of the petitioner do not specifically contemplate any separate seniority list for Senior Scale Officers but however, the respondents, State Government, chose to reopen the issue and carry out such exercise. Thereafter, the records reveal that the final seniority list was circulated by an OM dated 28.04.2010 which was disputed by the petitioner and the others who took up the matter before the Chief Secretary and one of the petitioners Shri Elvis Gomes has even challenged such list before this Court as well as the recommendation of the respondent no.16 of the select list. Ultimately, the said list circulated on 28.04.2010 was withdrawn on 01.10.2012 with immediate effect. The records also reveal that on 18.02.2013, another tentative seniority list of the Goa Civil Service Officers was circulated and objections were requested to be submitted on or before 15.03.2013. After considering the objections received, the said tentative seniority list of the Officers of the Goa Civil Service was determined on 24.06.2014. The said seniority list was prepared after examining the objections and the Government decided to accept the said final seniority list. No person was aggrieved nor have challenged such seniority list finalized by the Government, before this Court but, however, apparently, the respondents sought to review the final seniority list on 19.08.2014 thereby altering the seniority list finalized, to the prejudice of the petitioner. In the meanwhile, the petitioners filed a petition before this Court challenging the said exercise and thereafter another order was issued stating that the final seniority list dated 24.06.2014 shall be treated as a final seniority of Junior Scale Officers of the Goa Civil Service. The point for consideration, as such, was whether once the final seniority list dated 24.6.2014 was approved and accepted by the Government, there was any reason to review such list at the instance of the respondent nos. 2 and 3 or treat such list as seniority

of the Junior Scale Officers. We have already noted the observations of the Apex Court in the case referred to above and we find that once such final seniority list was prepared after taking into consideration the objections raised by all the concerned officers, the action to review such final seniority list would be arbitrary and not justified. Such exercise can lead to inequality and discrimination which are inhibited by Articles 14 and 16 of the Constitution in matters of public employment to ensure fairness and equal treatment of the Officers.

22. In this connection, in (1974) 4 SCC 3, in the case of ***E.P. Royappa v. State of Tamil Nadu***, a Constitution Bench of the Apex Court elaborately explained this aspect by observing in para 85, thus :

“85. The last two grounds of challenge may be taken up together for consideration. Though we have formulated the third ground of challenge as a distinct and separate ground, it is really in substance and effect merely an aspect of the second ground based on violation of Articles 14 and 16. Article 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus while Article 16 is a species.

Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose. J., “a way of life”, and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be “cribbed, cabined and confined” within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it effects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous

and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16.”

23. In (1974) 4 SCC 335, in the case of **General Manager, South Central Railway, Secunderabad vs. A.V.R. Siddhanti**, the Apex Court noted when the question of hostile discrimination in matters relating to public employment does not arise, by observing at para 20, thus :

“20. The fundamental right of equality means that persons in like situation, under like circumstances are entitled to be treated alike. The constitutional code of equality and equal opportunity”, observed this Court in *State of Jammu and Kashmir v. Triloki Nath Khosla* “is a charter for equals”. So long as employees similarly circumstanced in the *same* class of service are treated alike, — the question of hostile discrimination does not arise. The equality of opportunity for purposes of seniority, promotion and like matters of employment is available only for persons who fall substantially, within the same class or unit of service. The guarantee of equality is not applicable as between members of distinct and different classes of the service. The Constitution does not command that in all matters of employment absolute symmetry be maintained. A wooden equality as between all classes of employees regardless of qualifications,

kind of jobs, nature of responsibility and performance of the employees is not intended, nor is it practicable if the administration is to run. Indeed, the maintenance of such a “classless” and undiscerning “equality” where, in reality, glaring inequalities and intelligible differentia exist, will deprive the guarantee of its practical content. Broad classification based on reason, executive pragmatism and experience having a direct relation with the achievement of efficiency in administration, is permissible. That is to say, reasonable classification according to some principle, to recognise intelligible inequalities or to avoid or correct inequalities is allowed, but not mini-classification which creates inequality among the similarly circumstanced members of the same class or group.”

24. In (1993) 1 SCC 71, in the case of ***Food Corporation of India vs. Kamdhenu Cattle Feed Industries***, the Apex Court has emphasised the requirement of non-arbitrariness in a State action which should be in conformity with Article 14 of the Constitution and, as such, due weightage must be given to reasonable or legitimate expectations of the persons likely to be affected by such action, by observing at para 7, thus :

“7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to

adopt a procedure which is 'fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review."

25. We shall now deal with the challenge to the merit list prepared by the respondent No.16. On perusal of the proceedings of the respondent No.16, we find that it is noted that in the merit list prepared therefrom, the Petitioner was placed at serial no. 7, the Respondent no. 3 at serial no. 2 and Respondent no. 4 at serial no. 3. The minutes of the respondent No.16's meeting record that Rule 21 of the Goa Civil Service Rules 1997 provides that the promotions to senior scale are to be made on the basis of merit with due regard to seniority. On perusal of the minutes it appears therefrom that only some Annual Confidential Reports (ACRs) of the respective Officers were taken into consideration. The respondent No.16 has

to follow the Guidelines and assess the suitability of the Officers for promotion on the basis of their service records and with particular reference to the Confidential Reports of five preceding years. However, in cases when the requisite qualifying services is more than five years, the respondent No.16 should see the records with particular reference to the Confidential Reports for the years equal to the required qualifying service. The respondent No.16 should make its own assessment on the basis of the entries in the Confidential Reports because it has been found that sometimes, the overall grading in a Confidential Report may be inconsistent with the grading under various parameters. It is undisputed that when grading in the CRs of an Officer is "Outstanding", it should be only when exceptional qualities or performance have been noticed by the concerned Officer and the grounds should be reflected in such reports. In the present case, the importance of Confidential Reports cannot be over emphasized as it provides the basic and vital input for assessing the performance of the Officers for further advancement in his career. It is brought to our notice by the Petitioner that on bare perusal of the grading, based on the confidential reports of the Officers, more particularly of Respondent nos. 2, 3 and 4 for the relevant years, it is seen that the settled guidelines to prepare the CRs as per Swamy's Compilation on Confidential Reports, have not been followed. It is also pointed out that in breach of Clause 49(b), the respondent No.16 considered only Confidential Reports of five years though there were Officers who had regular service of more than six years. As such, we find that there was a gross breach of Rule 21 of the 1997 Rules whilst preparing such report as the decision to assess the merit has not been properly followed. Even as far as Respondent no. 2 is concerned, the grading in the CRs by the concerned Officer

which was submitted to the respondent No.16 as “Outstanding” has not followed the undisputed guidelines applicable in preparing such Confidential Reports.

26. Considering the above, on perusal of the assessment of the Confidential Reports of the concerned Officers, we find that in contravention of Cause 34 of the said guidelines, which clearly provides that the Government Servants should not be graded “Outstanding” unless exceptional qualities and performance have been noticed in them and that the ground for granting such grading should be clearly reflected therein, in most of the assessments of the CRs., of the Officers, the respondents No.2 and 3 have been graded “Outstanding” without stating any ground therein. Apart from that, although the required qualifying regular service of Junior Scale was 8 years and a relaxation of one to one and half years was granted and, all the candidates who were considered by the respondent No.16 had regular service of more than 6 years, in breach of Clause 49(b), the respondent No.16 considered only CRs. of 5 years. Apart from that, the records reveal that as far as the respondent No.2 Mr. Sandip Jacques is concerned, for the period from 01/04/2003 to 31/03/2004, there are no Confidential Reports available. So also, with regard to respondent No.3 Mr. Arun L. Desai, there are no Confidential Reports for the period from 01/10/2000 to 31/03/2001. As far as respondent No.4, the CRs. from 1/4/199 to 30/9/1999 were also not available. Besides, grading “Outstanding” given to such respondents do not disclose any exceptional qualities found during such evaluation. In such circumstances, we find that the relevant proceedings of respondent No.16 stand vitiated as the settled guidelines have not been followed. Based on such recommendations, the

petitioners should not be deprived of their seniority as the merit to be examined in terms of Rule 21 of the Rules of 1997 have not been duly complied with while making such recommendations. As already pointed out herein above, when the petitioner Mr. Elvis Gomes had initially filed the petition in 2012, he had categorically raised a challenge to such recommendations of respondent No.16. All other petitioners were respondents to such petition and supported the contentions of the petitioner. The Petition of Mr. Elvis Gomes was allowed to be withdrawn, keeping all the contentions raised therein, open. The normal rule is that when a particular employee is given a relief by a Court, all other identically situated persons should be treated akin by extending the same benefit, as not doing so would amount to discrimination and be violative of Article 14 of the Constitution. In the present case, as rights of the said Petitioner to challenge the merit list were left open, we find that all other similarly placed persons, who include the Petitioner, can avail of such reservation to challenge the disputed list. In such circumstances, we find that the recommendations of the respondent No.16 stand vitiated for non-compliance of the guidelines referred to herein above.

27. In this connection, the Division Bench of this Court in Writ Petition no. 33 of 2006 by Judgment dated 11.10.2012, in the case of **Shri Bramhanand M. Desai vs. Chief Electrical Engineer and ors**, it has been observed at paras 2 and 3 thus :

“2. It is not necessary to consider all the contentions raised by the petitioner. This petition can be disposed of on one ground alone. It is agreed that the said post is a promotional post; that prior to the appointment of

respondent No.4 to the said post, the petitioner and respondent No.4 were Assistant Engineers and that the petitioner and respondent No.4 were entitled to be considered for promotion. It is also agreed that the petitioner and respondent No.4 are Diploma holders. Accordingly, the qualifying service in respect of both of them is 12 years. Lastly, it is also agreed that while considering such candidates for promotion to the said post, clause 6.2.1 of the Guidelines for the D.P.C. Applies. The relevant portion thereof reads as under :

“Confidential Reports

6.2.1 Confidential Rolls are the basic inputs on the basis of which assessment is to be made by each DPC. The evaluation of CRs should be fair, just and non-discriminatory. Hence -

(b) The DPC should assess the suitability of the officers for promotion on the basis of their service record and with particular reference to the CRs for 5 preceding years. However, in cases where the required qualifying service is more than 5 years, the DPC should see the record with particular reference to the CRs for the years equal to the required qualifying service. (If more than one CR has been written for a particular year, all the CRs for the relevant year shall be considered together as the CR for one year). (emphasis supplied.)

3. The DPC, however, considered the CRs in respect of the petitioner and respondent No.4 only for the 5 preceding years. The DPC ought to have considered the CRs for 12 years which is the required qualifying service in respect the petitioner and respondent No.4.”

28. Elaborating the above, challenge of the petitioner on the decision of the

Respondent no. 16 is based on the information received by one of the Petitioners only on 23.05.2011 whereby the Goa Public Service Commission furnished copies of the relevant meetings of the proceedings held on 26.11.2004. A petition was also filed before this Court by one of the Petitioners Shri Elvis Gomes, inter alia, praying to quash the recommendation and seeking for a review DPC wherein the Petitioner was a Respondent to the said Writ Petition no. 368 of 2012 and supported the Petitioner. In the meanwhile, by Memorandum dated 01.10.2012, the Seniority List dated 28.04.2010 came to be withdrawn and thereafter on 09.11.2012, a tentative Seniority List of senior scale Officers of the Goa Civil Service was circulated inviting objections. In such tentative list, the Petitioner was placed at serial no. 6 below the Respondent no. 3 and the Respondent no. 4. The Petitioner filed detailed objections to such tentative list on 07.12.2012 and 13.12.2012. In the meanwhile, the learned Advocate General submitted that the Seniority List dated 28.04.2010 has been withdrawn by letter dated 01.10.2012 and a new Seniority List was in the offing and, consequently, the said Petition was allowed to be withdrawn with liberty as prayed for. Thereafter, another tentative Seniority List was circulated on 18.02.2013 and objections were invited wherein the Petitioner was placed at serial no. 12 above the Respondent no. 3 who was at serial no. 16 and the Respondent no. 4 who was at serial no.22. The Petitioner had no grievance with that regard. After considering the objection, on such tentative list, by Memorandum dated 24.06.2014, the final Seniority List of Officers of Goa Civil Service was determined in which the Petitioner was placed at serial no. 19 above the Respondent no. 3 who was at serial no. 23 and the Respondent no. 4 who was at serial no., 30. But, however, based on the representation of the Respondent nos. 2 and 3, the said final Seniority List was unilaterally reviewed by the State

Government to the detriment of the Petitioners thereby the Petitioner is placed at serial no. 24 below Respondent no. 3 who is at serial no. 15 and Respondent no. 4 at serial no. 18. Again, the records reveal that the Petitioner Mr. Elvis Gomes filed a Writ Petition before this Court being Writ Petition no. 547 of 2014 challenging the said Seniority List dated 19.08.2014 and during the pendency of the said Petition, a representation was made by the Petitioner on 28.08.2014 to Director (Services), Government of India, Ministry of Home Affairs. A statement came to be made by the learned Advocate General in the said Petition that the Government was looking into the grievance made by the Petitioner and ultimately an Order was placed before this Court dated 12.11.2014 in supersession of the one dated 19.08.2014 as being a tentative Seniority of the Senior Scale Officers of the Goa Civil Service. All the aforesaid facts disclosed that up to the said period, the final Seniority List of senior scale Officers was still under challenge and not finalised though a Seniority List of the Goa Civil Service was prepared on 28.11.2014.

29 With regard to the contention of the learned counsel appearing for the respondents that the members of the respondent no.16 are experts and their recommendations cannot be challenged before this Court in a petition under Article 226 of the Constitution of India, we find that the Apex Court in the judgment reported in **(2014) 14 SCC 370** in the case of **Union of India and others V/s S. P. Nayyar** has, *inter-alia*, observed that it is settled that the High Court under Article 226 of the Constitution of India cannot sit in an appeal over the assessment made by the DPC. But however, if the assessment made by the DPC is perverse or is not based on record or proper record has not been considered by the DPC, it is always open to the High Court under Article 226 of the Constitution to remit the matter back

to the DPC for recommendation but the High Court cannot assess the merit on its own on perusal of the service records of one or the other employee. As pointed out herein above, the relevant records namely the Confidential Reports of the concerned respondents were not available to the respondent no.16. Besides, the requirements as stipulated in the guidelines referred to herein above have not been followed by the respondent no.16 while making such recommendations. In such circumstances, the assessment by the respondent no.16 is perverse as it is not based on proper record, nor in terms of the said guidelines which has substantially affected the ultimate decision.

30. With regard to the contention of the learned counsel appearing for the respondents that it is not open to the petitioners now to challenge the merit list prepared based on the recommendations of the respondent no.16, we find that the Apex Court in the judgment reported in **2008(2) SCC L & S 765** in the case of the ***Union of India and Ors vs. Tarsem Singh*** has observed at para 5 thus :

“5. In *M.R. Gupta v. Union of India* the appellant approached the High Court in 1989 with a grievance in regard to his initial pay fixation with effect from 1-8-1978. The claim was rejected as it was raised after 11 years. This Court applied the principles of continuing wrong and recurring wrongs and reversed the decision. This Court held: (SCC pp. 629-30, para 5)

“5. ... The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules.

So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time-barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion, etc., would also be subject to the defence of laches, etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1-8-1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation, the application cannot be treated as time-barred...."

31. In the present case, as already pointed out herein above, the Committee's recommendations stand vitiated as relevant records which would have a material bearing in the ultimate decision were not examined. No other third party, besides the petitioner and parties to the above petitions, would be affected by the seniority list prepared, based on such recommendations. The challenge to such recommendations were kept open and, in fact, the petitioner had no grievance with the said seniority list prepared by the Government in June, 2014. The said recommendations of the respondent No.16 would result in a continuing and

recurring wrong to the petitioners which has to be reviewed in the interest of justice. The seniority would have its due place only when merit and suitability are approximately equal or when it is not possible to assess inter se seniority of equally eligible competent candidates who come very close to the order of merit and ability. In such circumstances, seniority will play its due role and will be called in aid of such consideration. In the present case, considering the placement of the petitioner and other concerned Officers, including the respondents No.2, 3 and 4, the grading in the merit would have a significant consideration in the ultimate merit list. As such, we find that reliance upon such merit list would cause grave prejudice to the petitioner and, as such, the State Government would have to remit the matter to the respondent No.16 to review such recommendations afresh, in accordance with law.

32 On perusal of the impugned report, we find that the respondent No.1A has, in fact, accepted the recommendations of the Committee of the Secretaries namely, "Parimal Rai Committee". Though the respondent No.1A records that such recommendations were not accepted by the Government, nevertheless, the conclusions drawn by the respondent No.1A are, in fact, in consonance with such report. Once, the Government had refused to accept such report, the question of relying upon the report to draw the conclusions in the impugned Seniority List, is not at all justified. Apart from that, the Merit List prepared whilst promoting the petitioner to the Senior Scale, based on Commission's recommendations dated 26/11/2004, have been heavily relied upon whilst fixing the subject Seniority List. For the reasons already stated herein above, we have found that the said recommendations stand vitiated, in view of the failure in complying with the

mandatory guidelines and consequently, to alter the Seniority List of the petitioner, based on such recommendations, would not at all be tenable.

33. Even otherwise, the impugned seniority list prepared in April, 2015 is contrary to the directions issued by the Hon'ble Chief Minister which clearly directed that such list be prepared by the Chief Secretary. Though the Principal Secretary/respondent No.1A who has prepared the list, apparently was Officiating for some period, it is not disputed that when the impugned list was finalized and when the process was in progress, there was a full time Chief Secretary in place. On this ground alone the impugned seniority list stands vitiated. On perusal of the observations of the respondent no.1A while preparing the impugned list, we find that the respondent no.1A has exceeded his powers while carrying out such exercise as the final seniority list prepared on 14.06.2014 which was duly approved by the Government has been overruled, thereby unsettling the Government decisions. Apart from that, we find that all the contentions raised by the petitioner have not at all been examined by the respondent No.1A/Principal Secretary. Besides, the reports which were rejected by the Government have been relied upon to prepare the impugned seniority list. This itself discloses that the impugned seniority list cannot be accepted. Even acceptance by the Government of the report of the Respondent 1A does not at all disclose any reason nor considers the objections raised by the petitioner.

34. The grievance of the petitioner is that based on such seniority list, they will lose an opportunity to be appointed by promotion to the Indian Administrative Service. In this connection, we shall now examine the regulations which govern

such appointment by promotion. Regulation 5(2) provides that the committee shall consider for inclusion to such list, the cases of members of the State Civil Services in the order of seniority in that service of a number which is equal to three times the number referred to in sub-regulation (1) which inter-alia provides that the committee shall not consider the cases of a member of the State Civil Service unless on the first day of January of the year for which the select list is prepared he is substantive in the State Civil Service and has completed not less than 8 years of continuous service (whether Officiating or substantive) in the post of Dy. Collector or any other post or posts declared equivalent thereto by the State Government.

35. No doubt, Rule 8(2) of the IAS Recruitment Rules empowers the Central Government, in special circumstances, and on recommendation of the State Government from time to time, to recruit to the Indian Administrative Service only persons of outstanding ability and merit, serving in connection with the affairs of the State, selected from amongst the Officers of the State Civil Service holding substantive gazetted post in accordance with the regulations made for such purpose by the Central Government in consultation with the State Government. The Central Government made the IAS Selection Regulations in that regard whereby it is only the State Civil Service Officers holding substantive Gazetted Post, involving duties comparable in importance and responsibility to that of substantive gazetted posts held by the Officers of the State Civil Service, with not less than 8 years continuous service as Deputy Collector or other posts declared equivalent, as for the purpose of revenue and general administration the charge of such posts involving sub-divisions of a district are posts of higher responsibility to make them eligible for promotion to Indian Administrative Service. Thus, it becomes

obvious that the IAS Regulations clearly required the Officers of the State Civil Service, to make them eligible for selection to the Indian Administrative Service, to hold substantive gazetted posts which involve duties comparable in importance and responsibility to that of Deputy Collector's Posts or higher Posts of State Civil Service. Hence, it can be said without any hesitation whatsoever that the IAS Rules did not envisage for selection to the Indian Administrative Service officers of State Civil Service who were holding posts lower than that of the posts of Deputy Collectors.

36. It cannot be disputed that the post of Deputy Collector is a Class I Gazetted post in the Goa Civil Service. The Recruitment Rules for promotion to the Indian Administrative Service provides period of 8 years continuous service in the posts of Deputy Collector or its equivalent posts, which would mean that in the Goa Civil Service for Class I Posts, to make themselves eligible to the Indian Administrative Service, they should have minimum eligibility criteria of serving 8 years as Deputy Collectors or their equivalent. There can be cases in which the officers who have been promoted to Senior Scale could be officers who have not completed the minimum eligibility criteria of 8 years in the posts of Deputy Collector. The aspect as to the suitability of the candidates with reference to their integrity, are matters which have to be examined by the Selection Committee. Whether they are more meritorious or not, are matters that the Selection Committee will examine while preparing the selection list, on the basis of the names recommended by the State Government. Even in the process of promotion by the Selection Committee from the members of the Goa State Civil Service to the Indian Administrative Service, a junior may be promoted in preference to a person senior to him in the

seniority list on the basis of the records of their service in earlier years' of service. But, what we are examining is that if the seniority list is not prepared in accordance with the Rules, it would impeach the recommendations made by the State Government to the Central Government as contemplated under the said Rules. No doubt, the selection committee would have to record reasons in case of superseding the claims of the senior members. As such, selection has to be made on merit among all the eligible officers of each year. After selection, names in the select list should be arranged in order of seniority of officers in State Service subject to claim of exceptional merit. The zone of selection, thereafter, consists of three parts viz. (1) Officers who fall within Regulation 5(2), after excluding all officers falling under Rule 5(2) and (3); (2) Officers above the age of 54 who are carried forward from the earlier selection list in force; and (3) Officers above the age of 54 who have been deprived of their chance of being considered due to non-holding of meetings of the selection committee. Merit is the sole test for promotion and there is categorization of eligible members on the basis of their selective records which are scrutinized by the committee consisting of high ranking Officers of the State Government and Central Government.

37. In such circumstances, it was a long drawn practice which was being followed for all these years whereby senior-most in the said posts were recommended for promotion by the State Government until the impugned decision. When we asked the learned Government Advocate as to whether any Officer in Goa Civil Service, Class I, other than the Senior-most in the Junior Scale was recommended to the Indian Administrative Service from the year 2007 till the impugned decision, the learned Government Advocate, upon instructions, has

submitted that all the Officers recommended during the interregnum were the Officers who were senior-most in the seniority list prepared of the Junior Scale Officers. Even in the Office Memorandum dated 18.02.2013, the Government accepted the report in toto and in pursuance to the recommendations of the Ombudsman and on the basis of the directions of the Government, the tentative seniority of the Goa Civil Service Officers was redrawn including the Officers subsequently promoted. The Petitioners had no grievance to the placement in such tentative list of the Goa Civil Service. Thereafter, on perusal of the Memorandum dated 24.06.2014, it inter alia, states that a Committee of Secretaries was constituted to study the objections received and to submit its recommendations. The Committee of Secretaries submitted their recommendations vide report dated 29.01.2014 but, however, the Government has not accepted such recommendations of the Committee of Secretaries and the final Seniority of the Officers of the Goa Civil Services as per the Ombudsman report and the decision of the Government was notified.

38. On perusal of the said list, we find that the Petitioner herein is at serial no. 19 and above the Respondent nos. 3 and 4. It would be pertinent to note that the said list was finalised by the State Government as the final seniority of the Officers of the Goa Civil Services and was in tune with the earlier practice of finalising the Seniority List based on the seniority as reflected in the Junior Scale Officers' seniority as referred to herein above. Despite of the above, by a subsequent Memorandum dated 19.08.2014, in view of some objections raised by the Respondent nos. 2 and 3 with regard to the placement in the said Seniority List, the Petitioner was put below the said Respondent nos. 2, 3 and 4. The Petitioner

thereafter filed a Writ Petition in this Court being Writ Petition no. 547 of 2014 challenging the said revised Seniority List. But, however, an Order was thereafter produced before this Court by the learned Government Advocate dated 12.11.2014, inter alia, superseding the said Memorandum dated 19.08.2014 and inviting objections, if any, to such list being treated as a tentative list.

39. The Apex Court, in a Judgment reported in (1989) 1 SCC 285 in the case of ***R. M. Ramual vs. State of Himachal Pradesh and others***, it has been observed at para 17, thus :

“17. Mr Shankar Ghosh, learned counsel appearing on behalf of Respondents 4 and 5 (Respondent 5 has since died), submits that after the final seniority list was approved by the Central Government, it had become final and it cannot be challenged in 1982 after 11 years. Further, it is submitted by him that the final seniority list has never been challenged by the appellant and, accordingly, he cannot be allowed to challenge the same by filing a writ petition. It is true that the final seniority list was sent to the Central Government and presumably it was approved, but because a seniority list has been approved by the Central Government, it cannot be laid down as a rule of law that even though it has been illegally prepared in violation of the directions of the Central Government itself to the prejudice of the officer or officers concerned, it cannot be challenged. Normally, when a seniority list has been made final, it should not be allowed to be challenged. But when a seniority list is prepared ignoring all just principles and also the rules framed

or directions given by appropriate authority, seriously affecting any officer, it is always liable to be examined and set aside by the court. We are, therefore, unable to accept the contention of the learned counsel for Respondent 4 that the seniority list having been made final after the approval of the Central Government cannot be challenged by the appellant.”

40. In another Judgment of the Apex Court reported in **(1993) 3 SCC 677**, in the case of **Venkateshwara Theatre vs. State of A.P.**, the Apex Court dealt with the aspect as to how discrimination can arise if persons who are unequals are treated as equals, by observing at para 23, thus:

“23. Just as a difference in the treatment of persons similarly situate leads to discrimination, so also discrimination can arise if persons who are unequals, i.e. differently placed, are treated similarly. In such a case failure on the part of the legislature to classify the persons who are dissimilar in separate categories and applying the same law, irrespective of the differences, brings about the same consequence as in a case where the law makes a distinction between persons who are similarly placed. A law providing for equal treatment of unequal objects, transactions or persons would be condemned as discriminatory if there is absence of rational relation to the object intended to be achieved by the law.”

41. The crucible of the challenge to the seniority list presents serious complexities which require careful resolution of the controversies involved in the

service. The stakes are high. The promotions to the IAS depend on the seniority list. The seniority is not a fundamental right, it is merely a civil right, declared by the Supreme Court in the judgment reported in **(2003) 5 SCC 604**. It is only when promotion/appointment is based on equal opportunity and seniority is attached to such promotion does it become a facet of Article 16(1) and, therefore, a fundamental right in Part III of the Constitution of India. In another judgment of the Apex Court reported in **(2008) 6 SCC 797** in the case of **State of Uttaranchal and another V/s Madan Mohan Joshi and others**, it has been held that the seniority or *inter se* is not a fundamental right but a civil right.

42. The seniority is relevant to and has value mostly in cases of promotion, otherwise it is deadwood. There are exceptions but as a general rule seniority has become the hallmark of mediocrity. It is mostly the dead tissue of the living intellect striving for perfection and recognition of pure merit in the workplace. Maturing or matured rights to promotion when denied, cloud or protract the cause of the bitterest battles in service law disputes on the writ side of the Court. The action of the respondents trying to alter the seniority list without any justification has resulted in a situation where the issue of seniority has burnt the hearts and souls of the members of the State Civil Service in Goa in their anticipated run-up to the Indian Administrative Service. Seniority is not a constitutional value nor a constitutional issue nor a constitutional practice but is a product of a lesser right in civil administrative law or service jurisprudence based on rules of service governing conditions of service and where there are none of them by usage, past practice, administrative precedents and in absence of all, then on the principles of justice, equity and good conscience. The essence of such verdict on the question of

seniority is relevant in the understanding of what lies ahead and what seniority means in its broad terms and what one would make of it in such cases. In the present case, we are call upon to examine the complex issues relating to the appointment in the State Civil Service and the consequential seniority flowing therefrom. Seniority is to be determined from the date of appointment. It is sequitur that a person becomes a member of the service only on appointment but not before the event happens by the methods prescribed. In **(1996) 2 SCC 168** in the case of **Union of India V/s S. S. Uppal**, the Apex Court considered the seniority rule in the Indian Administrative Service where 8seniority follows appointment to service and the year of allotment in the IAS will have to be determined according to the provisions of the seniority rules which are in force at the time of the appointment and not prior thereto. Though it is well settled that an employee cannot claim to have a vested right to have a particular position in any grade, but all the same he has right of his seniority being determined in accordance with the Rules which remained in force at the time when he was taken into the cadre. Thus, seniority is linked to the Rules laying down the conditions of the service and not otherwise.

43. The contention of the learned counsel appearing for the respondents that the petition is barred by laches cannot be accepted. In the present case, the records reveal that even after the promotion to Senior Scale Officer, the seniority list was prepared in the year 2006 to which the petitioner did not have any grievance. Apart from that as late as in June, 2014, the seniority list of Goa Civil Service was prepared and finalized after being accepted by the State Government and only thereafter on account of some objection raised by the respondent nos. 2 and 3 it was sought to be reviewed. The list which was the final list prepared after seeking of

objection was arbitrarily sought to be altered by issuing a Memorandum that the said final seniority list was final seniority list of the Junior Scale Officers. The surprising aspect is that all the Senior Grade Officers who were already promoted are also shown in such alleged Junior Scale Officers. This exercise on the part of the respondents/State Government is arbitrary which resulted in unfairness to the prospects of the petitioner of being eligible for the promotion to the IAS cadre. The decisions which are impugned are those which were passed in April, 2015 and as such, we find that the contention of the learned counsel appearing for the petitioner that the petition is barred by laches cannot be accepted. Apart from that, on bare examination of the record, the recommendation of the DPC in the year 2006 stands vitiated as admittedly all the confidential reports which are the crucial material to consider the merit of the candidates were not available with the concerned committee. Hence, the contention of Mr. Pangam, learned counsel appearing for the respondents and Mr. Sardesai, learned Senior Counsel appearing for the respondents to that effect cannot be accepted.

44. The judgment of the Apex Court relied upon by Mr. Lawande, learned Government Advocate reported in **1996(2) SCC page 488** in the case of **Nutan Arvind (Smt.) V/s Union of India and another**, to the effect that there is no scope of judicial review while selecting the candidates on merit basis by an Officer not competent to do so is not applicable to the facts of the present case. In the present case, the DPC did not have requisite confidential reports for their consideration. The judgment relied upon by Mr. Lawande, learned Government Advocate reported in **1995 Supplement (1) SCC 434** in the case of **Sarat Kumar Dash and others V/s Biswajit Patnaik and others**, to the effect that there is no

need for giving reason by DPC while recommending the promotion is not applicable to the facts of the present case nor any arguments were raised by the learned counsel appearing for the petitioner on that count. So also the judgment of the Apex Court reported in **1993 Supplement (3) SCC 202** in the case of **State of U.P. V/s Onkarnath Tandon and others** is not at all applicable to the facts of the present case. The grievance of the petitioner is not on the ground that the junior has superseded the senior but the seniority list finalized could not be altered when it met the requirement of the rules. The judgment of the Apex court reported in **1986 Supplement SCC 617** in the case of **R. S. Dass Vs Union of India and others** is not applicable as challenge to the recommendations by the State Government are not being raised on the ground of being superseded. This is not the case of supersession but the case of altering the seniority list which was already finalized and prepared in terms of the Rules on a criteria followed for all the years. It is to be noted that Mr. Amonkar, learned Standing Counsel for the Central Government has also pointed out that the eligibility for promotion to IAS cadre from the State Service is on the basis of the seniority in the cadre of Dy. Collector.

45. So also the judgment reported in **AIR 1974 SC 87** in the case of **Union of India V/s M. L. Capoor and others**, is not at all applicable to the facts of the present case. The judgment of the Apex Court reported in **(2009) 1 SCC 180** in the case of **Sethi Auto Service Station and another V/s Delhi Development Authority and others** relied upon by Mr. Lawande, learned Government Advocate to advance his contention that notings in the departmental file do not have sanction of law, we find that the factual position that the confidential reports were not available of the concerned candidates at the time of such DPC meeting has not

been disputed based on the information furnished to the petitioner under Right to Information Act. The judgment reported in **(2011) 7 SCC 789** in the case of **Jagdish Prasad V/s State of Rajasthan and others**, also is not applicable to the facts of the present case. The judgment reported in **(2010) 15 SCC 752** in the case of **Union of India and others V/s C. Jayaprakasan** is also not applicable to the facts of the present case as this is not the case wherein the junior to the petitioner was promoted prior to the promotion of the petitioner. In the present case, all were promoted and selected on the same selection process on the same date.

46. What emerges from the above discussion is that the Committee meeting held on 26/11/2004 by the respondent No.16 to make recommendations for promotions of the petitioners to the Senior Scale Officers is in gross violation of the settled guidelines to examine the merit of the concerned officers. Not following such guidelines and examining the relevant records would affect the ultimate decision taken by the Committee as held by the Division Bench of this Court in the case of **Shri Bramhanand M. Desai vs. Chief Electrical Engineer and ors.** (supra). Apart from that, as the merit of the Officers has not been graded in accordance with the settled guidelines, there is violation of Rule 21 of the Rules of 1997. We have also taken note that the impugned seniority list prepared by the respondent No.1A was not prepared by the Chief Secretary as directed, but by the Principal Secretary. That apart, the respondent No.1A has relied upon the recommendations of "Parimal Rai Committee" which were not accepted by the Government. Besides, a settled practice of preparing the seniority list of the Goa Civil Service was being altered without any justifiable reason. Article 16 of the Constitution embodies the fundamental guarantee that there shall be equality of opportunity for all

citizens in matters relating to employment or appointment to any office under the State. As such, it has been enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of a new classless egalitarian society envisaged in the Constitution. In the present case, the petitioners were deprived of being treated equally with the other similarly placed officers who were appointed and thereafter promoted to the Senior Scale on the same day by the same selection process. The fundamental right of equality means that persons in like situations, under like circumstances are entitled to be treated alike. In the present case, as pointed out herein above, as the recommendations of the respondent No.16 are contrary to the guidelines which were bound to be followed, it has resulted in unfairness to the petitioners in the matter of their promotions to higher posts. Having relied upon decisions taken based on the recommendations which are contrary to the Rules of 1997, acceptance of the report of the respondent No.1A is arbitrary and cannot be sustained and deserves to be quashed and set aside.

47. In view of the above, we find that the above petitions partly succeed and the Seniority List notified by the respondents dated 30th April, 2015 deserves to be quashed and set aside, consequently, any action taken based on the said seniority list would have no legal effect.

48. In view of the above, we pass the following :

O R D E R

- (I) The Writ Petitions are partly allowed.
- (II) The impugned Seniority List notified by the Respondents dated 30th April, 2015 is quashed and set aside, with all legal consequences.
- (III) The respondent No.1 is directed to re-examine and prepare a fresh Seniority List in the light of the observations made herein above and in accordance with law.
- (IV) Rule is made absolute in the above terms, with no order as to costs.

K. L. WADANE, J.

F. M. REIS, J.

At this stage, Shri D. Pangam, learned Counsel appearing for the respondent No. 3 and Ms. S. Pereira, learned Counsel appearing for the respondent No. 2 Sandip Jacques pray for a stay of the operation of the Judgment passed today. Shri C. Padgaonkar and Shri A. F. Diniz, learned Counsel appearing for the respective petitioners oppose grant of such stay.

In the peculiar facts and circumstances of the case, operation of the Judgment passed today is stayed for a period of 8 weeks from today. The respondent No.1 not to act upon the impugned Seniority List till such time.

K. L. WADANE, J.

F. M. REIS, J.

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