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

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W.P.(C) 9580/2015

Reserved on: 15th March, 2016

Date of decision: 03 June, 2016

PRAKASH SINGH

..... Petitioner

In person.

Versus

UNION OF INDIA AND ANR.

.... Respondent

Through: Mr. Bharathi, CGSC with
for UOI.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J.:

Prakash Singh in this writ petition assails the order dated 11th September, 2015 passed by the Principal Bench of the Central Administrative Tribunal, New Delhi (Tribunal, for short), whereby OA No.2719/2014 stands dismissed on the ground of limitation.

2. The petitioner was appointed as a Senior Administrative Officer (SAO), Grade-II in the Department of Defence Research and Development, Ministry of Defence ('DRDO' for short) on 30th April, 2004. His seniority viz. promotee officers, was fixed with reference to his date of joining as SAO, Grade-II in the seniority list published by the

DRDO on 1st June, 2004. The petitioner did not object to the seniority as fixed predicated on his date of joining. In 2007, those senior to the petitioner as per the seniority list dated 1st June 2004 were promoted to the post of SAO, Grade-I.

3. On 19th September, 2013, the petitioner made a representation for correction of his seniority and claimed consequential relief by way of promotion to SAO, Grade-I with effect from 1st January, 2007. He relied upon the decision of the Supreme Court in *Union of India & Ors. Vs. N.R. Parmar & Others*, (2012) 13 SCC 340. By letter dated 20th January, 2014 the petitioner was informed, inter alia, that the matter regarding re-fixation of seniority and consequent promotion had been referred to the Department of Personnel and Training for their advice, which was awaited. The petitioner thereupon filed OA No.570/2014, which was disposed of on 17th February, 2014 with a direction to the respondents to dispose of the petitioner's representation dated 19th March, 2013, relying on the decision in the case of *N.R. Parmar* (supra), by a reasoned and speaking order.

4. By order dated 29th April, 2014, which reads as under, the representation of the petitioner was rejected recording the following:-

“WHEREAS Shri Prakash Singh has submitted a representation dated 19.09.2013 for re-fixation of his seniority in the grade of SAO-II vis-a-vis promote officers and conducting of review DPC for his promotion to the

higher grade of SAO-I. He has cited the Hon'ble Supreme Court judgment dated 27.11.2012 in UOI vs. NR Parmar & Ors case, wherein it is adjudicated that the direct recruits have to be interspaced with promotes of the same recruitment year.

AND WHEREAS Shri Prakash Singh was appointed as SAO-II on 30.04.2004 as direct recruit through UPSC. 04 vacancies of SAO-II were notified to the UPSC for filling up by direct recruitment. These vacancies were advertised by USPC in Mar 2001. The UPSC held a recruitment test on 17.03.2002 for the purpose of screening the candidates to be called for interview. The interviews were held in Sept 2002 at UPSC. A list of 04 candidates was recommended by the UPSC in Oct 2002 for appointment as SAO-II. Shri Prakash Singh was not amongst the 04 recommended candidates. Out of the 04 candidates 02 candidates belonging to OBC were also recommended for appointment to the post of SAO-I and they joined as SAO-I. UPSC was then requested to forward candidates from the reserved panel for appointment as SAO-II in Nov 2003. The name of Shri Prakash Singh (OBC) was forwarded by UPSC in Jan 2004. Shri Prakash Singh was offered appointment and he joined in DRDO as SAO-II on 30.04.2004. He was given seniority in the grade w.e.f. 30.04.2004.

AND WHEREAS para 2.4.1 and 2.4.2 of DOP&T OM dated 03.07.86 on consolidated instructions on seniority contains the following provisions:-

2.4.1 The relative seniority of direct recruits and of promotes shall be determined according to the rotation of vacancies between direct recruits and promotes, which shall be based on the quota of vacancies reserved for direct recruit and promotion respectively in the Recruitment Rules.

2.4.2 If adequate number of direct recruits does not become available in any particular year, rotation of quotas for the purpose of determining seniority would take place only to the extent of the available recruits and the promotees.

AND WHEREAS the seniority of Shri Prakash Singh in the Grade of SAO-II was fixed in the year 2004 taking into consideration the term "available" as contained in Para 2.4.2 of DOP&T OM dated 03.07.86 as actual year of appointment after declaration of results/selection and pre-appointment formalities.

AND WHEREAS Shri Prakash Singh is now contending that since the recruitment process for the posts were started in 2000, he should be placed senior to all those promotees who were promoted in the year 2001. He has been requesting to grant him seniority in the year 2000 above all those promotees of the year 2001 citing the Hon ble Supreme Court judgment dated 27.11.2012 in UOI vs. NR Parmar & Ors. case, wherein it is adjudicated that the direct recruits have to be interspaced with promotees of the same recruitment year. The case of NR Parmar was a dispute of inter-se seniority between Income Tax Inspectors of the Income Tax Department, Direct recruits and promotes. The direct recruit Income Tax Inspectors (joined the service in Mar-May 1995) had challenged the seniority list finalized on 08.02.99 claiming seniority over some promote Income Tax Inspectors. They were claiming seniority from the date of occurrence of vacancies. The matter reached the Apex Court after series of litigations between Direct Recruits and promotes in various CATs/High Courts.

AND WHEREAS the judgments of Courts are generally department specific and department specific judgment cannot be implemented across the board without orders/guidelines of DOP&T, which is nodal authority. Even in Department specific judgments, all such verdicts of Hon ble Courts on service matters are considered/analyzed by DOP&T, who frames and promulgates instructions/policy for Central Govt. employees. For example, DOP&T had issued detailed guideline for implementation of post based roster for reservation in all departments in line with the law laid down by Hon'ble Supreme Court in the case of R.K.

Sabharwal vs. State of Punjab as well as J.C. Mallicks vs. Ministry of Railways and disclosure of Annual Confidential Report in the case of Dev Dutt vs Union of India.

AND WHEREAS the representation of Shri Prakash Singh was, therefore, referred to DOP&T for clarification/ advice on his request for re-fixation of his seniority in the grade of SAO-II w.e.f. 01.01.2001 i.e. above all promote SAO-II who were appointed in the grade after 01.01.2001 in the light of Hon'ble Supreme Court judgment dated 27 Nov 2012 in NR Parmar & Ors vs UOI case. It was intimated by DOP&T that the implications of the judgment of the Supreme Court dt. 27.11.2012 in Union of India Vs. N.R. Parmar & Ors. on determination of inter-se seniority between direct recruits and promotees was under their examination in consultation with the Department of Legal Affairs and necessary instructions in its implementations would be issued shortly. DOP&T has advised DRDO HQ, Min. of Defence to await the issue of the instructions for taking further necessary action in this case. The same was intimated to Shri Prakash Singh vide our letter dated 20.01.2014.

AND WHEREAS, not satisfied with the reply given by the department, Shri Prakash Singh has filed OA No.570/2014 before Hon'ble CAT, Principal Bench, New Delhi requesting re-fixation of seniority in the grade of SAO-II on the basis of judgment in the case of NR Parmar & Ors vs UOI and for consequent relief by way of promotion to the post of SAO-I w.e.f. 01.01.2007. Hon'ble CAT, vide its order dated 17.02.2014, has directed the department to dispose of his pending application dated 19.09.2013 in consonance with the rules and instructions and the judgment of Hon'ble Supreme Court in N.R Parmar case through a reasoned and speaking order within a definite time frame not exceeding four months from the date of receipt of a copy of the order.

AND WHEREAS instructions on the fixation of seniority between direct recruits and promotees in pursuance of

Hon ble Supreme Court judgment dated 27.11.2012 in Civil Appeal No.7514-7515/2005 in the case of NR Parmar & Ors vs. UOI has now been issued by DOP&T vide its OM dated 04.03.2014. The instructions inter-alia provide that the rotation of quota based on the available direct recruits and promotees appointed against the vacancies of a Recruitment year, as provided in DOP&T O.M dated 7.2.1986/03.07.1986, would continue to operate for determination of inter se seniority between direct recruits and promotees. The available direct recruits and promotees, for assignment of inter se seniority, would refer to direct recruits and promotes who are appointed against the vacancies of a recruitment year and recruitment year would be the year of initiating the recruitment process against a vacancy year.

AND WHEREAS the above DOP&T OM further stated that the above principles for determination of inter se seniority of direct recruits and promotees would be effective from 27.11.2012, the date of Supreme Court judgment in Civil Appeal No.7514-7515/2005 in the case of N.R Parmar vs UOI & Ors and the cases of seniority already settled with reference to the applicable interpretation of the terms availability, as contained in DOP&T dated 7.2.86/3.7.86 may not be reopened.

AND WHEREAS the seniority of Shri Prakash Singh in the grade of SAO-II was settled way back in 2004 and further promotions were also made from that settled seniority.

NOW THEREFORE, the competent authority, after examining the representation dated 19.09.2013 submitted by Shri Prakash Singh and taking into account the DOP&T instructions dated 04.03.2014 on the subject, has decided not to reopen the seniority case of Shri Prakash Singh, which was already settled in 2004.

Sd/-
(Bimal Ghosh)
Dy. Dir. (Per-AAI)
For DG DRDO”

5. Aggrieved, the petitioner filed OA No.2719/2014 which has been dismissed by the impugned order dated 11th September, 2015. The Tribunal has observed that the judgment of the Supreme Court in *N.R. Parmar* (supra) did not create any fresh law, but had reiterated the principles regarding fixation of seniority as in vogue prior to 3rd March, 2008. The petitioner having joined service in 2004, should have raised his grievance regarding fixation of seniority then or immediately thereafter. Instead, the petitioner approached the Tribunal in the year 2014. Copiously referring to *P.S Sadasivaswamy versus State of Tamil Nadu*, (1975) 1 SCC 152, *B.S. Bajwa & another v. State of Punjab & others*, (1998) 2 SCC 523 and *State of Karnataka & others v. S.M. Kotrayya & others*, (1996) 6 SCC 267, the tribunal has categorically held that the question of seniority cannot be reopened after a lapse of time and expiry of the limitation period.

6. The tribunal, i.e. the Central Administrative Tribunal has been constituted and created under the Administrative Tribunals Act, 1985 (the Act, for short). Section 21 of the Act stipulates that the Tribunal will not admit an application barred by limitation. For the sake of convenience, we would like to reproduce Section 21 of the Act, which reads:-

“21. Limitation.—

(1) A Tribunal shall not admit an application,—

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where—

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

Thus, Section 21 (1) provides and specifies the limitation period for an application. An application filed after the specified period is not to be admitted. Under Section 21, sub-section (1), period of limitation for redressal of grievances in clause (a) is one year and in clause (b) is one year after expiry of six months from the date of the appeal or representation under Section 20(2) (b) of the Act. Sub-section (2) is not relevant for us, for it deals with grievances occurring prior to when the jurisdiction, powers and authority of the Tribunal became or becomes exercisable under this Act. However, an analysis of clause (b) to sub-section (2) would show that the limitation period of one year in respect of grievances covered by clause (a) and the outer limit of one year after expiry of six months in respect of grievances covered under sub-section (2) to Section 20 is mandatory. Sub-section (3) postulates that notwithstanding anything contained in sub-sections (1) and (2), an application can be entertained if the applicant can satisfy the Tribunal that they had sufficient cause for not making the application within the period enumerated in sub-sections (1) or (2).

7. The petitioner, however, relies on Section 17 (1)(c) of the Limitation Act, 1963 which reads:-

“17. Effect of fraud or mistake –

(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act-

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c. the suit or application is for relief from the consequences of a mistake;

the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it, or in the case of concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production:....”

Section 17(1) (c) of the Limitation Act refers to mistake of law and fact and stipulates that the cause of action would arise when the said mistake of law and fact is discovered or could be discovered by reasonable diligence. The petitioner submits that he was under a mistake of law and in terms of section 17(1)(c) of the Limitation Act, the OA was erroneously and wrongly dismissed as barred by limitation. At this stage we would like to refer to Section 29(2) of the Limitation Act, which reads;-

“29 (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent

to which, they are not expressly excluded by such special or local law.”

Section 29 (2) of the Limitation Act states that provisions of Section 4 to 24 of the Limitation Act do not apply where a special or local law provides for a mode of computation of the period of limitation. Read in this light, Section 17(1) (c) of the Limitation Act would not be applicable to the extent expressly excluded by Section 21 of the Act, i.e. Administrative Tribunals Act, 1985. Sub-sections (1) and (2) of Section 21 specifically stipulate and provide when the limitation period would begin. Once the said starting point is so fixed, it will be wrong to apply provisions of Section 17(1) (c) of the Limitation Act and extend the beginning or starting point on the precept that the beginning or starting point in case of mistake whether of fact or in law, would be the date of knowledge of the applicant as to the said mistake. If we accept the plea, this would be contrary to and override the provisions of sub-sections (1) and (2) of Section 21 of the Act. However, this would not affect the petitioner or an applicant who seeks condonation of delay and in that context, refers and relies upon a decision of the Court or Tribunal. Whether or not in the given facts the said explanation should be accepted or not, is a different matter. There is a difference between offering an explanation by relying upon a pronouncement for condonation of delay

under sub-section 3 to Section 21 of the Act; and Section 17(1) (c) of the Limitation Act that has the effect of postponing the limitation period till the plaintiff or applicant has discovered the mistake of fact or law. Section 17(1)(c) of the Limitation Act has an independent application and in view of the fact that sub-sections (1) and (2) of Section 21 stipulate and specify the beginning or starting point of limitation, Section 17(1)(c) would not be applicable.

8. Indeed, this view has been followed and accepted by different Courts and the Tribunal for long. The reason for indicating and specifying the period of limitation under sub-sections (1) and (2) of Section 21 is the larger public interest as administrative decisions pertaining to service matters should be made the subject matter of challenge and adjudication with promptitude and parties should not sleep over their rights and claims. The government servants are literate and aware of their rights. They cannot be equated with the marginalized and poor, who because of social and economic reasons, may not be aware of their right or hesitate in approaching the Court or Tribunal. We would refer to some case law which is relevant. Way back in 1975, in ***Malcom Lawrence Cecil D'souza Vs. Union of India and Ors.*** (1976) 1 SCC 599, it was held that if anyone feels aggrieved by an administrative decision affecting one's seniority, the said government employee should

act with due diligence and promptitude and not sleep over the matter. Raking up old settled claims after a long time in questioning seniority etc. is likely to cause administrative complications and difficulties. This would be contrary to the the interest of smoothness and efficiency of service. The quietus should not be disturbed and shattered after a lapse of time.

9. Similarly, in *K.R. Mudgal and Others Vs. R.P. Singh and Others*, (1986) 4SCC 531, the Supreme Court highlighted that promotions should not be disturbed after an inordinate delay. Merits need not be examined when a belated challenge is made to promotions and seniority, as that would create a sense of uncertainty and insecurity amongst government servants. A person feeling aggrieved must approach the Court at the earliest. Reference was made to another decision of the Supreme Court in *Union of India Vs. M. Ravi Varma*, (1972) 1 SCC 379. These were decisions where writ petitions were filed challenging the seniority lists and promotions made. These observations were made with reference to the principle of delay and laches.

10. In the case of *B.S. Bajwa* (supra), the Supreme Court upheld rejection of the prayer for ignoring and overlooking the delay of nearly a decade in filing the writ petition. There was a seniority dispute and the applicant had been treated junior all along. The inordinate delay itself

was sufficient to decline interference. These observations were again made when the government servant had invoked writ jurisdiction under Article 226 of the Constitution, where no specific period of limitation is prescribed, but general principles of delay and laches apply. The government servant relying upon a favourable court decision in another case, had claimed seniority. Plea of parity was raised but was rejected. Similarly, in *P.S Sadasivaswamy* (supra), a matter relating to a writ petition under Article 226 of the Constitution, the claim of the writ petitioner was rejected on the ground that it had the effect of unscrambling the scrambled egg, for he had approached the Court after nearly 14 years. At the relevant time, he had failed to question the promotion of his “juniors”. A person aggrieved by an order promoting his juniors should approach the Court within six months or a year of such promotion. The Supreme Court observed that though the Limitation Act was not applicable when Courts exercise their powers under Article 226, albeit the writ courts do not interfere in a matter after a passage of time. It would be sound and wise not to exercise discretion when the aggrieved person does not approach the Court expeditiously. When the petitioner/applicant allow things to happen and approach the Court by way of a stale claim, he seeks to unsettle the settled matters, and this should not be permitted.

11. We would now examine some decisions in which Section 21 of the Administrative Tribunals Act has been discussed and elucidated. In *Union of India & Ors. Vs. M.K. Sarkar*, (2010) 2 SCC 59, dealing with the question whether disposal of a belated representation in regard to a stale or dead issue/dispute in compliance with the direction given by the Tribunal can be considered as furnishing a fresh cause of action, the Supreme Court in categorical terms held that neither a Court or Tribunal's direction to consider a representation without examining merits, nor a decision made in compliance with such direction, will extend the period of limitation or erase the delay and laches. The Supreme Court went on to observe that a Court or Tribunal before directing consideration of a claim or representation should examine whether the claim or representation was with reference to a live issue or pertained to a dead or stale claim. Further, the Court or Tribunal should clarify that such consideration would be without prejudice to any contention relating to limitation or delay and laches. Even if the Court or Tribunal does not expressly say so, the same will be the legal position.

12. Recently, the Supreme Court in *State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava and Ors.*, (2015) 1 SCC 347 after examining a catena of decisions on the question whether similarly situated government employees should be granted the benefit of an order

passed by a Court in another case, had examined the issue in the context of discrimination and equal treatment under Article 14 of the Constitution. Reference was made to the principles of delay and laches. In the said context, an issue also arose as to whether the government, being an ideal employer, in fairness, should grant similar relief to others similarly situated. Elucidating on the aforesaid aspect, it was held as under:-

“22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the

acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see *K.C. Sharma v. Union of India*). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

In the said case, selection process had taken place in 1986 and appointment orders were issued in 1987, but cancelled in the same year. The cancellation order was challenged after about 9 years by a person, relying on the judgment in favour of others who had earlier challenged the cancellation and had got relief. In such circumstances, the Court observed that this unexplained delay and laches of 9 years had disentitled the said person from making the claim. In the present case, we should

also record that the decision in *N.R. Parmar* was in a different case and relating to a different cadre.

13. The said provisions were interpreted in *S.M. Kotrayya* (supra) in the following words:-

“8. The decision of the Constitution Bench in *S.S. Rathore case* [supra] has no application to the facts in this case. Therein, this Court was concerned with the question whether the total period of six months covered under sub-section (3) had to be excluded in filing the petition in the suit, when it was transferred to the Tribunal under the Administrative Tribunal Order. In that behalf, the Constitution Bench held that a suit under a civil court's jurisdiction is governed by Article 58 of the Limitation Act, 1963 and the claims for redressal of the grievances are governed by Article 21 of the Act. The question whether the Tribunal has power to condone the delay after the expiry of the period prescribed in sub-sections (1) and (2) of Section 21, did not arise for consideration in that case.

9. Thus considered, we hold that it is not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in sub-sections (1) or (2) of Section 21, but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. In this case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). That was not

the explanation given. Therefore, the Tribunal is wholly unjustified in condoning the delay.”

The aforesaid quotation is reflective on several aspects. It states that the limitation for filing of an original application before the Central Administrative Tribunal is governed by Section 21 of the Act. It also states that an applicant can file an application giving explanation for the delay beyond the period specified in sub-sections (1) and (2) of Section 21 of the Act and when the Tribunal is satisfied that the delay has been properly explained, it can be condoned and the original application entertained. Importantly, in the facts of the said case, it was observed that the explanation that the applicant had come to know of a relief granted by the Tribunal in another case was not a proper and just explanation, which would justify condonation of delay. The decision of the Tribunal condoning the delay for the said reason was held to be wholly unjustified and improper. We have quoted the aforesaid portion, for in the later part, it makes a reference to the factum that the applicant therein had filed an original application immediately after the Tribunal’s decision in another case. This, it was observed, was not a proper explanation at all. What was required to be explained by the applicant therein was why he could not avail the remedy of redressal of his grievance before expiry of the period stipulated in sub-sections (1) and

(2) to Section 21 of the Act. The order of the Tribunal condoning the delay was set aside.

14. Reference can be made to the decision of the Supreme Court in *Union of India & Ors. Vs. Tarsem Singh*, (2008) 8 SCC 648 wherein the Supreme Court had examined the question of limitation and continuous cause of action, to observe:-

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

(emphasis supplied)

15. The Supreme Court in *CIT Vs. Saurashtra Kutch Stock Exchange Ltd.* (2008) 14 SCC 171, after referring to earlier case law has held that judicial decisions operate and apply retrospectively, for as per Blackstonian theory, it is not the function of the Court to pronounce a “new rule” but to maintain and expound the “old one”. Judges do not make law. They only discover and elucidate the correct law. The law, even when overruled, remains the same. Thus, if a subsequent decision takes a contrary view and alters the earlier decision, it does not make new law. Therefore, when a Court discovers and declares the correct principle of law, it has to be applied retrospectively, for it only clarifies the legal position as it existed earlier. Reference was made to *Golak Nath Vs. State of Punjab*, AIR 1967 SC 1643, wherein the Supreme Court had accepted the doctrine of prospective overruling, for the past cannot be erased by a new judicial declaration, but observed that this is an exception to the general rule of the doctrine of precedent.

16. The earlier adjudications, which have become final, between the same parties, would be binding on the said parties or their representatives-in-interest by applying the principle of *res judicata* or constructive *res judicata*. Similarly, an unchallenged or unquestioned earlier decision or positions adopted would continue to be binding on the

parties concerned, if the concerned party has not challenged and questioned the said decision or position by way of a writ or appeal or by taking recourse to an appropriate judicial remedy, where the law of limitation or principles of delay and laches, as the case may be, would come in the way and prevent the party concerned from enforcing the claim in a judicial forum or Court of law. Law of limitation or delay and laches, does not affect the rights of parties as per the declaration of law, but bars and prevents a party from enforcing the said right by taking recourse to judicial or quasi-judicial proceedings. The law may be in favour of a party, but the party could be barred from enforcing the said right or claim because the period of limitation as prescribed, prevents and bars the party from such enforcement. When the principle of delay and laches applies, the court refuses to exercise discretion and jurisdiction. Behind the law of limitation and the principle of delay and laches, lies the important and salutary public policy principle that stale and old issues should not be reopened and made subject matter of litigation. Issues, which were never agitated and were allowed to rest cannot be raked up at any point of time. Thus, fence sitters who let the time pass, lose their right to enforce their claim.

17. The petitioner, in his written submissions as well as the oral hearing, referring to Section 17 (1)(c) of the Limitation Act, relied on the

decision of the Supreme Court in *Mahabir Kishore and Others Vs. State of Madhya Pradesh*, (1989) 4 SCC 1. In *Mahabir Kishore* (supra), the Supreme Court discussed Section 17(1) (c) by referring to Section 72 of the Contract Act and Article 113 of the Limitation Act. It was accordingly observed:-

“This Court held that the term "mistake" in Section 72 of the Indian Contract Act comprised within its scope a mistake of law as well as a mistake of fact and that, under that section a party is entitled to recover money paid by mistake or under coercion, and if it is established that the payment, even though it be of a tax, has been made by the party labouring under a mistake of law, the party receiving the money is bound to repay or return it though it might have been paid voluntarily, subject, however, to questions of estoppel, waiver, limitation or the like. On the question of limitation, it was held that Section 17(1)(c) of the Limitation Act, 1963 would be applicable and that where a suit will be to recover "monies paid under a mistake of law, a writ petition within the period of limitation prescribed, i.e., within 3 years' of the knowledge of the mistake, would also lie." It was also accepted that the period of limitation does not begin to run until the plaintiff has discovered the mistake or could, with reasonable diligence, have discovered it.

The aforesaid dictum has to be read subject to the later pronouncement of the Constitution Bench in the case of *Mafatlal Industries Ltd. Vs. Union of India and Others* (1997) 5 SCC 536. The Supreme Court specifically dealt with the principle enunciated in *STO Vs. Kanhaiya Lal Mukundlal Saraf*, AIR 1959 SC 135, and subsequent decisions including *Mahabir Kishore* (supra) with reference to Section 72 of the

Contract Act and the period of limitation. Specific reference was made to *Tilokchand Motichand Vs. H.B. Munshi*, (1969) 1 SCC 110, where a person had tried to take advantage of a decision in another person's case rendered several years later. It was observed that such a person should not be allowed to take advantage of a decision in another case. The contention that the person did not know that the provision would be struck down and this fact was not in the person's knowledge was rejected, observing that everybody was presumed to know the law, and it was the person's duty to bring the matter before the Court for consideration. Having abandoned to take recourse to the machinery of law, the person cannot file litigation because another person was more adventurous and got a favourable decision. In this case, it was held that there was no question that in a writ petition, a person could rely on a plea of mistake by invoking Section 17(1) (c) of the Limitation Act. A similar view was expressed in the *State of M.P. Vs. Bhailal Bhai*, AIR 1964 SC 1006 and *State of Kerala Vs. Aluminium Industries Ltd.*, (1965) 16 STC 689. Reference was made to *D. Cawasji & Co. Vs. State of Mysore*, (1975) 1 SCC 636, which holds that the result of accepting the opposite view would be that a person could recover the amount of tax paid after several years of payment, if any party successfully challenges

the validity of law. This would be both inexpedient and unjust as far as the State was concerned.

18. Directly dealing with the question whether a manufacturer can invoke Section 72 of the Contract Act and claim refund relying upon Section 17(1) (c) of the Limitation Act within three years of discovery of such mistake with reference to the decision in *Kanhaiya Lal* and *Bhailal Bhai* (supra), it was held by B.P.Jeevan Reddy J. who had authored the majority judgement in *Mafatlal Industries Ltd* (supra) as under:-

“Is it open to the manufacturer to say that the decision of a High Court or the Supreme Court, as the case may be, in the case of another person has made him aware of the mistake of law and, therefore, he is entitled to refund of the duty paid by him? Can he invoke Section 72 of the Contract Act in such a case and claim refund and whether in such a case, it can be held that reading Section 72 of the Contract Act along with Section 17(1)(c) of the Limitation Act, 1963, the period of limitation for making such a claim for refund, whether by way of a suit or by way of a writ petition, is three years from the date of discovery of such mistake of law? *Kanhaiya Lal* is understood as saying that such a course is permissible. Later decisions commencing from *Bhailal Bhai* have held that the period of limitation in such cases is three years from the date of discovery of the mistake of law. With the greatest respect to the learned Judges who said so, we find ourselves unable to agree with the said proposition. Acceptance of the said proposition would do violence to several well-accepted concepts of law. One of the important principles of law, based upon public policy, is the sanctity attaching to the finality of any proceeding, be it a suit or any other proceeding. Where

a duty has been collected under a particular order which has become final, the refund of that duty cannot be claimed unless the order (whether it is an order of assessment, adjudication or any other order under which the duty is paid) is set aside according to law. So long as that order stands, the duty cannot be recovered back nor can any claim for its refund be entertained. But what is happening now is that the duty which has been paid under a proceeding which has become final long ago — may be an year back, ten years back or even twenty or more years back — is sought to be recovered on the ground of alleged discovery of mistake of law on the basis of a decision of a High Court or the Supreme Court. It is necessary to point out in this behalf that for filing an appeal or for adopting a remedy provided by the Act, the limitation generally prescribed is about three months (little more or less does not matter). But according to the present practice, writs and suits are being filed after lapse of a long number of years and the rule of limitation applicable in that behalf is said to be three years from the date of discovery of mistake of law. The incongruity of the situation needs no emphasis. And all this because another manufacturer or assessee has obtained a decision favourable to him. What has indeed been happening all these years is that just because one or a few of the assessees succeed in having their interpretation or contention accepted by a High Court or the Supreme Court, all the manufacturers/assesseees all over the country are filing refund claims within three years of such decision, irrespective of the fact that they may have paid the duty, say thirty years back, under similar provisions — and their claims are being allowed by courts. All this is said to be flowing from Article 265 which basis, as we have explained hereinbefore, is totally unsustainable for the reason that the Central Excise Act and the Rules made thereunder including Section 11-B/Rule 11 too constitute “law” within the meaning of Article 265 and that in the face of the said provisions — which are exclusive in their nature — no claim for refund is

maintainable except under and in accordance therewith.

19. In taxation matters, assessee also rely on Article 265 of the Constitution and, therefore, predicate their case on a higher pedestal. Referring to the said claim predicated on Article 265, the majority judgment has held :-

“An order or decree of a court does not become ineffective or unenforceable simply because at a later point of time, a different view of law is taken. If this theory is applied universally, it will lead to unimaginable chaos. It is, however, suggested that this result follows only in tax matters because of Article 265. The explanation offered is untenable, as demonstrated hereinbefore. As a matter of fact, the situation today is chaotic because of the principles supposedly emerging from *Kanhaiya Lal* and other decisions following it. Every decision of this Court and of the High Courts on a question of law in favour of the assessee is giving rise to a wave of refund claims all over the country in respect of matters which have become final and are closed long number of years ago. We are not shown that such a thing is happening anywhere else in the world. Article 265 surely could not have been meant to provide for this. We are, therefore, of the clear and considered opinion that *the theory of mistake of law and the consequent period of limitation of three years from the date of discovery of such mistake of law cannot be invoked by an assessee taking advantage of the decision in another assessee's case. All claims for refund ought to be, and ought to have been, filed only under and in accordance with Rule 11/Section 11-B and under no other provision and in no other forum.* An assessee must succeed or fail in his own proceedings and the finality of the proceedings in his own case cannot be ignored and refund ordered in his favour just because in another assessee's case, a similar point is decided in favour of the manufacturer/assessee. (See the pertinent

observations of Hidayatullah, C.J. in *Tilokchand Motichand* extracted in para 46.) The decisions of this Court saying to the contrary must be held to have been decided wrongly and are accordingly overruled herewith.”

20. The aforesaid dictum would have application to the facts of the present case as Section 21 of the Act is an independent and express provision and therefore, to this extent as per the mandate of Section 29(2) of the Limitation Act, Section 17(1)(c) of the Limitation Act is not per se applicable.

21. The petitioner in our opinion has erroneously submitted that the decision in the case of *Mafatlal* (supra) would not be applicable as in the said case the taxpayers had already lost the battle on merits or abandoned their claim at some intervening stage. In the present case, the petitioner had neither approached the Tribunal nor did he contest the seniority viz. promotees and, therefore, would be entitled to take advantage (if applicable) of the subsequent declaration of law in the case of *N.R. Parmar* (supra). We do not for obvious reasons agree with the petitioner that the limitation period under Section 21 of the Act would start from 27th November, 2012 i.e. the date of the said judgment. Failure to initiate or abandonment after initiation would stand on the same position. The ratio in *Mafatlal's case* (supra) binds us.

22. The petitioner had not filed and prayed for condonation of delay before the Tribunal. On the question of limitation, the petitioner had stated that the original application was presented within the prescribed period under Section 21 of the Act. Under the heading “limitation”, it was declared:-

“3. LIMITATION

That the applicant further declares that the application is within the limitation period prescribed under Section 21 of the Central Administrative Tribunals Act, 1985.”

Under the heading “details of remedies exhausted”, the petitioner had stated:-

“That the Applicant had made the representations on 19.9.2013 & 10.12.2013 before the respondent DRDO for his promotion to SAO-I w.e.f. 1.1.2007, copies placed as ANNEXURE:A-12(Colly), page no.88-93. In response thereto, the respondent DRDO has replied on 20.01.2014, copy placed as ANNEXURE:A-15, page no.123. Aggrieved by the said order dated 20.01.2014, the Applicant herein had filed an O.A. No.570/2014, which was disposed of on 17.2.2014, copy placed as ANNEXURE:A-16, page no.124-125, whereby directions were issued to the respondents to pass a reasoned and speaking Order within four months. Accordingly, the respondent DRDO has passed the impugned order dated 29.4.2014, copy placed as ANNEXURE:A-3, page no.25-27, which has been assailed in the present OA.”

23. When we look at the factual matrix of the present case, the promotee officers were given seniority way back in the year 2004. The

petitioner did not object and protest at that time. The promotees got their first promotion in 2007 and have been working on the promotional post, without any demur and protest. After about 8-9 years, the petitioner has raised objections in 2013 as to his placement in the seniority list of 2004 and also sought promotion from 2007, when others were promoted, whom he now claims were his juniors. He wants antedated and notional or retrospective promotion. It is obvious that the promotee officers, who were further promoted in the year 2007 have worked at the promotional or higher grade for almost 6-7 years. If this stale and dead claim is allowed to be raised, it would upset the settled position which had remained unchallenged for a decade. This would cause chaos and resentment. We therefore do not intend to remand the case for a fresh decision permitting the petitioner to file an application seeking condonation of delay. It would be a futile exercise.

24. The submission that the Tribunal in its earlier order dated 17th February, 2014 had directed the respondents to dispose of the petitioner's representation in consonance with the order of the Supreme Court in *N.R. Parmar's* case through a reasoned and speaking order, should be read as accepting that the prayer made was within the limitation period, has to be rejected. The submission is contrary to the law. We have already referred to the majority judgment of the Supreme

Court in *Mafatlal* and judgments in *Tarsem Singh*, *Arvind Kumar Shrivastava* (supra) and more petinently *M.K.Sarkar* (supra) which deals with representations. The petitioner's case cannot be on a better footing. Decision of a representation relating to a time-barred claim of seniority, promotion etc., would not constitute a fresh and new cause of action or revive a time barred and stale claim. The order dated 29th April, 2014 rejects the representation on the ground of limitation and delay.

25. The petitioner has evidently misconstrued the first order of the Tribunal dated 17th February, 2014 passed in OA No.570/2014, for the said order merely directed the respondents to dispose the petitioner's representation dated 19th September, 2013 in consonance with rules and instructions. As the petitioner had referred to the judgment in the case of *N.R. Parmar* (supra), the direction was that the said judgment should be considered and a reasoned and speaking order be passed. This was not a decision on merits and the direction given by the Tribunal was that seniority of the petitioner must be fixed on the basis of *N.R. Parmar* (supra). In the said order the stand of the respondent DRDO that the seniority was fixed in the year 2004 was noted. The Tribunal did not decide the question on merits, observing that an immediate remedy could be provided by the respondents to the petitioner by taking a decision on his pending representation.

26. In view of the aforesaid discussion, we do not find any merit in the present writ petition and the same is dismissed. No order as to costs.

(SANJIV KHANNA)
JUDGE

(NAJMI WAZIRI)
JUDGE

JUNE 03 , 2016
NA