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

+ **WRIT PETITION (CIVIL) No. 2464/2000**

Reserved on : 18th May, 2018

Date of decision: 31st July, 2018

SMT. ANJU NIGAM

..... Petitioner

Through Ms. Jyoti Singh, Sr. Adv. with Mr. Amit Gupta, Mr. Anant A. Pavgi, Mr. Anshul Sharma, Ms. Mansi Kukreja, Mr. Padma Kumar, Advocates

Versus

UNION OF INDIA & ORS.

..... Respondents

Through Mr. Arun Bhardwaj, CGSC with Mr. Nikhil Bhardwaj, Adv. for Union of India. Mr. R.L. Dhawan, Advocate for R-9 to R-13.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE DR. JUSTICE S. MURALIDHAR

HON'BLE MS. JUSTICE HIMA KOHLI

SANJIV KHANNA, J.:

The afore-stated writ petition filed by Anju Nigam impugning order dated 7th April, 1999, passed by the Principal Bench of the Central Administrative Tribunal (Tribunal) in OA No.2225/1997 was allowed vide judgment dated 31st August, 2009, with the direction that she be treated as an officer appointed on the post of Junior Time Scale in the Indian Postal Service with effect from 26th August, 1988. Anju Nigam was to be accordingly accorded benefit on the basis of the said date of joining for her

promotion in the Senior Time Scale and next promotion in the Junior Administrative Grade. Departmental Promotion Committee was directed to be convened to reconsider Anju Nigam for promotion to the Junior Administrative Grade, because of wrong fixation of initial date of appointment in the Junior Time Scale.

2. The judgment dated 31st August, 2009 was recalled vide order dated 20th May, 2013 on the Review Application No.709/2012, filed by Rajinder Kumar Kashyap and others highlighting that Writ Petition (Civil) No. 5924/1999 filed by co-applicants in OA No.2225/1997, impugning the same order dated 7th April, 1999, had been dismissed by this High Court vide order dated 9th September, 2009. Thus, there were two contradictory judgments passed by the High Court, one in the present Writ Petition and the other in Writ Petition No. 5924/1999, impugning the order dated 7th April, 1999 passed by the Tribunal.

3. The recall order dated 20th May, 2013, passed on the review application was made a subject matter of challenge by Anju Nigam before the Supreme Court in Civil Appeal No. 10948/2014, which was partly allowed vide order dated 9th December, 2014, after noticing the factual matrix with a direction that the present writ petition would be heard by a Full Bench of the High Court i.e. a bench of three Judges. The order of the Supreme Court records that the larger bench would examine the question of conflict in case relief is granted to Anju Nigam in W.P. (C) No. 2464/2000, notwithstanding the fact that Writ Petition (C) No 5924/1999 filed by the co-applicants in OA No.2225/1997 had been dismissed. Further, Rajinder

Kumar Kashyap and others were directed to seek impleadment in the present writ petition.

4. By order dated 29th April, 2016, C.M. No.10599/2013, for impleadment filed by Rajinder Kumar Kashyap, Manju Pandey and Damodar Vasanth Mahesh, was allowed. Order dated 29th April, 2016 also allowed the application for impleadment, C.M. No. 9662/2013, filed by Sanjay Sharan and Vinaya Prakash Singh (V.P.Singh), recording that they should be impleaded, subject to just exceptions, as they were parties before the Tribunal.

5. Present litigation has a chequered history and due to lapse of time, the controversy and issues raised and the effective prayers sought have somewhat changed as would be reflected when we refer to facts in detail. We have tried to resolve the controversy and dispute to the extent possible in this writ petition, which is not the original proceeding, but impugns the order dated 7th April, 1999 passed by the Tribunal in OA No.2225/1997. We have taken care and exercised caution that this decision should not in any way result in a conflict with the orders passed in other litigation/original applications decided by the Tribunal.

6. We begin by referring to facts in brief in following sub-paragraphs to enable us to focus on the main issue and controversy.

6.1. Indian Postal Service is a Grade-A service of the Union of India, selection for which is partly made through Civil Services Examination (CSE) conducted by the Union Public Service Commission. Upon selection, appointment is made in the Junior Time Scale.

6.2. In August, 1988, results for CSE conducted in 1987 were published and 15 candidates were allotted Indian Postal Service as per the following order of merit:-

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Sl. No.	Rank	Name
1.	209	Kum. Aindri Anurag
2.	507	Smt. Ranju Lal
3.	515	Harish Chand Agarwal
4.	541	T.P. Raghavendra
5.	549	Kum. Anjali Sarin
6.	553	Sanjay Sharan
7.	556	Vinaya Prakash Singh
8.	559	V. Raja Rajan
9.	564	Kum. Anju Nigam
10.	565	Vinay Kumar Tiwary
11.	568	Kum. Meera Ranjan
12.	572	Kum. Sharda Bharadwaj
13.	769	M. Sampath
14.	779	Balwan
15.	S	P.D. Tshering

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Said officers belong to 1988 Batch of the “Indian Postal Service”. On appointment, they were to be posted in the Junior Time Scale.

6.3. Sanjay Sharan and V.P. Singh at Sr. Nos. 6 and 7, respectively were senior to Anju Nigam at Sr. No. 9 in the order of merit/ranking. Selected candidates were thereupon given offer of appointment and were required to report at Lal Bahadur Shastri National Academy of Administration in Mussoorie, for training on 24th August, 1988.

6.4. Sanjay Sharan and V.P. Singh had sought exemption and did not report for training, whereas V. Raja Rajan, who had secured 8th rank

immediately below Sanjay Sharan and V.P. Singh had reported and joined training on 26th August, 1988. Sanjay Sharan and V.P. Singh had joined Indian Postal Service a year later, on 21st August, 1989.

6.5. Anju Nigam had joined Indian Postal Service as a probationary officer on 15th May, 1989. Vinay Kumar Tiwary, who had secured 10th rank below Anju Nigam had reported and joined training on 12th January, 1989.

6.6. On 1st July, 1990, the seniority list of Indian Postal Service, Grade-A officers was published in which both, Sanjay Sharan and V.P. Singh were shown as junior to Anju Nigam. Their seniority was depressed in terms of Rule 4 of the Central Civil Service Examination Rules, 1987, published in the Official Gazette on 19th December, 1987, based and predicated on the date of joining. The date of joining in the case of Sanjay Sharan and V.P. Singh was shown and recorded as 18th December, 1989 i.e. date of joining the probationary training at the Postal Staff College, New Delhi, instead of 21st August, 1989, the date of joining the foundation course at Mussoorie.

6.7. On 7th January, 1993, Department of Personnel and Training issued instructions/OM No. 13018/1/93-AIS(1) amending Rule 4 of the Civil Services Examination Rules, 1987, restoring seniority of officers as per their ranking and merit list, if they had obtained exemption from joining the training along with their batch mates. In other words, seniority of the candidates selected and granted exemption from joining the training course, would not be depressed vis-a-vis other selectees, who had joined the training course. This was in terms of the decision of the Tribunal in case of Alok Kumar, OA No. 200/1989 and 61 other OAs decided on 20th August, 1990,

striking down the statutory provisions made to the contrary. This decision was upheld by the Supreme Court in *Mohan Kumar Singhania and Ors. versus Union of India*, 1992 Suppl. 1 SCC 594. It was specifically directed that a candidate, having permission to appear in the next CSE, would retain his/her original seniority as per merit list ranking.

6.8. As a result of the aforesaid OM, the seniority of Sanjay Sharan and V.P. Singh had to be restored according to their ranks, for both of them had been granted exemption from attending the training course because they wanted to appear in the 1988 CSE.

6.9. V. Raja Rajan and 8 other officers in the Junior Time Scale were promoted to the Senior Time Scale with effect from 26th August, 1992, vide order No.4-35/92-SPG dated 30th November, 1992.

6.10 On 15th November, 1996 in terms of DOP&T O.M. dated 7th January, 1993 depressed seniority of both Sanjay Saran and V.P. Singh was restored according to their merit rank in the CSE-1987. As a result of restoration of their seniority, both Sanjay Saran and V.P. Singh became senior to Anju Nigam, for the simple reason that they were senior to her in the merit list.

6.11 However, inadvertently, in the civil list published on 1st November, 1996, Sanjay Saran and V.P. Singh were shown as promoted to the Senior Time-Scale on 18th December, 1993 instead of 21st August, 1993.

6.12 On 14th March, 1997, the above mistake was corrected and the seniority of Sanjay Saran and V.P. Singh was restored vide notification No.4-24/96-SPG. Sanjay Saran and V.P. Singh were also given benefit of

Rule 20(8) of the Indian Postal Service Group 'A' Recruitment Rules, which states that a senior would be considered for promotion if his junior is being considered for promotion by the Departmental Promotion Committee. In accordance with the said Rule, the date of promotion of Sanjay Sharan and V.P. Singh was reviewed and they were treated as promoted to the Senior Time Scale on 26th August, 1992 i.e. the date on which their immediate junior, V. Raja Rajan at Sr. No.8 of the original merit/ranking list was promoted to the Senior Time Scale.

6.13 Anju Nigam also got benefit of the said review in terms of the OM dated 7th January, 1993 and Rule 20 (8) of the Indian Postal Service (Group A) Recruitment Rules and her date of promotion to Senior Time Scale was revised from 5th May, 1993 to 12th January, 1993, i.e., the date on which Vinay Kumar Tiwary, her immediate junior, was promoted to the Senior Time Scale. Accordingly, Notification No.4-24/96-SPG dated 14th March, 1997 was published.

6.14 Anju Nigam, along with V.K. Tiwary, Meera Ranjan, M.R. Tshering, Sharda Sampath, M. Sampath and P.D. Tshering had then filed OA No.2225/1997 before the Principal Bench of the Central Administrative Tribunal seeking antedating of their date of entry into service as 26th August, 1988. As noticed above, the said OA No.2225/1997 was dismissed by a common order dated 7th April, 1999.

7. Impugned order dated 7th April, 1999 passed by the Tribunal records that the case of Anju Nigam, along with others, was predicated on the contention that offers for appointment were delayed and they were not

responsible for the failure to join the training in 1988. Anju Nigam and other applicants had relied upon OM No.13018/1/93-AIS(I) dated 7th January, 1993 to claim that their date of joining should be reckoned with effect from 26th August, 1988. This OM was made applicable to probationers appointed to different services on the basis of CSE held in 1987 and onwards. It was submitted that the probationers, who had obtained permission to abstain from joining the training for appearing in the next CSE were assigned seniority with candidates who had undergone probationary training. They were to be given seniority with their batch mates as per their merit ranking. Applicants, including Anju Nigam, had asserted that as per the said OM, joining dates should be reckoned from the date, on which training had commenced for the 1988 Batch officers i.e., August, 1988. Submission of the applicants, including Anju Nigam, was that they had sought exemption, though not for appearing in the 1988 examination and, therefore, were entitled to identical benefit and their date of joining should be ante dated to the date when the foundation/training course had commenced.

8. Official respondents in their reply had submitted that cadre allotment in respect of applicants could be completed only after the officers were allowed to join the foundation course. Anju Nigam, it was stated, was given exemption from attending the foundation course. The applicants had not suffered as a result of staggering of the offers of appointment as they were not senior enough in the merit list, highlighting that four of the applicants had been earlier allocated different services and it was only after a few months that they were allotted to the Indian Postal Service. Anju Nigam's

case was slightly different as she had initially been allocated to the Indian Postal Service, but she had requested that she may not be sent for training immediately.

9. It is the case of the respondents that the applicants, including Anju Nigam, had put up a joint case and had misrepresented that the date of joining of Sanjay Sharan and V.P. Singh had been backdated or revised to 26th August, 1988, whereas their date of joining was not backdated. Both Sanjay Sharan and V.P. Singh had got promoted to the Senior Time Scale with effect from 26th August, 1992 instead of 21st August, 1993 for the reason that their immediate junior, V. Raja Rajan was promoted to the Senior Time Scale on 26th August, 1992, on completion of four years of service, V. Raja Rajan having joined on 26th August, 1988.

10. The Tribunal in the impugned order referring to the above facts, observed that seniority of Sanjay Sharan and V.P. Singh was restored pursuant to the decision in Alok Kumar's case, which was affirmed by the Supreme Court and had resulted in advancing their promotion to the Senior Time Scale to August, 1992 in terms of Rule 20 (8) of the Indian Postal Service (Group A) Recruitment Rules. Therefore, charge of discrimination and claim of ante dating the date of appointment of Sanjay Sharan and V.P. Singh had no basis. Their juniors (including Anju Nigam) had not been promoted and stolen a march over them. It was observed that the applicants had not been able to show violation of any legal right. On the question of limitation, the Tribunal observed that the applicants, including Anju Nigam, should not be allowed relief of ante dating of their appointments made in

1989 in an OA filed in 1997. The Applicants, including Anju Nigam, had predicated their case by challenging the order dated 30th November, 1992, which was an innocuous order, for regularization of the in-service officers in the Senior Time Scale Grade. Challenge to the order dated 30th November, 1992 could not be extended to include a challenge to the original or initial date of appointment.

11. A controversy was raised during arguments before us, as to whether Sanjay Sharan and V.P. Singh were impleaded as parties to OA No.2225/1997, for in the certified copy, the memo of parties reflects three respondents, namely, Union of India, Chairman, UPSC and Secretary to the Government of India. However, we would record that appearance of Mr. R.L Dhawan, Advocate for private respondents is specifically mentioned in the certified copy and in the body of the order, arguments addressed by Mr. R.L. Dhawan, Advocate on behalf of the respondent No.4 have been referred to, which clearly indicates that Sanjay Sharan and V.P. Singh were impleaded as parties. In all fairness, the said respondents should have been impleaded as parties to the present writ petition filed by Anju Nigam. They were not impleaded as parties to the writ petition, though surprisingly, the co-applicants, namely, M.R. Tshering, Vinay Kumar Tiwary, Sharda Sampath, M. Sampath and P.D. Tshering were impleaded as respondent Nos. 4 to 8 to the writ petition. Order dated 29th April, 2016, allowing C.M. No. 9662/2013 and impleading Sanjay Sharan and V.P.Singh as respondents records that both of them were parties before the Tribunal.

12. At this stage, we would like to reproduce Rules 2(f) and 20(8) of the Indian Postal Service (Group A) Recruitment Rules and examine them. Term “regular service” has been defined in Rule 2(f) of the Indian Postal Service (Group A) Recruitment Rules, which reads as under:-

“2.(f) “Regular Service” in relation to any grade means the period or periods of service in the grade rendered after selection according to the prescribed procedure, for long-term appointment to that grade and includes any period or periods:-

- (i) during which an officer would have held that grade but for his being on leave or on training or on foreign assignment;
- (ii) taken into account for purposes of seniority in the case of these appointed at the initial constitution of the Service;”

The aforesaid Rule states that regular service in relation to any grade means period or periods of service in that grade after selection according to the prescribed procedure for long-term appointment in that grade and includes the period during which the officer would have held that grade, but for his being on leave or training or foreign assignment and this period would be taken into consideration for seniority for promotion to the post.

Rule 20(8), which is in the fascicle of Part-IV of the Indian Postal Service (Group A) Recruitment Rules relating to promotions, reads as under:-

“20 (8) If an officer appointed to any grade in the service is considered for promotion to any higher grade all persons senior to him in the grade shall also be

considered, notwithstanding that they may not have rendered requisite number of years of service.”

The Rule postulates that when an officer is considered for promotion, then an officer senior to him, even if he has not rendered requisite number of years of service, is to be also considered for promotion to the next higher grade.

13. It is undisputed that Anju Nigam had joined the service as a probationer on 5th May, 1989. She was granted seniority in terms of her position in the merit list at Sr. No.9 below V. Raja Rajan and above Vinay Kumar Tiwary. On completion of four years, she was promoted to Senior Time Scale on 15th May, 1993. However, this promotion to the Senior Time Scale was treated as made on 12th January, 1993 as Vinay Kumar Tiwary, who was her immediate junior, was granted promotion to the Senior Time Scale on 12th January, 1993, since he had joined Indian Postal Service on 12th January, 1989. Anju Nigam, accordingly, had maintained her seniority in the Senior Time Scale as per the Rule position.

14. The service Rules do not permit and allow Anju Nigam to claim that she should be treated as having joined and entered the Indian Postal service on or before her date of actual joining i.e. 15th May, 1989. However for purpose of promotion to the Senior Time Scale, she was to be considered for promotion with her juniors who had joined service before her. Her seniority thereby was not to be depressed in the Senior Time Scale. In the present case, Anju Nigam has been given her first promotion in the Senior Time Scale from the date her immediate junior, Vinay Kumar Tiwary had joined.

15. As noticed above, Anju Nigam and other co-applicants had wrongly predicated and premised their case on the assumption that Sanjay Sharan and V.P. Singh had been given the benefit of backdating of their date of appointment in view of the fact that they were granted exemption from attending the training course after declaration of CSE results in 1987. This is incorrect and wrong, for neither Sanjay Sharan nor V.P. Singh has been given benefit of backdating of their date of appointment. Their date of appointment remains 21st August, 1989. However, their promotion to the Senior Time Scale has been backdated to 28th August, 1993 as their immediate junior V. Raja Rajan (at serial no.8) was promoted to the Senior Time Scale on the said date. Benefit given to Sanjay Sharan and V.P. Singh is identical to the benefit given to Anju Nigam in whose case also promotion to the Senior Time Scale has been backdated to the date of promotion of her immediate junior Vinay Kumar Tiwary on 12th January, 1993 in terms of Rule 20(8) of the Indian Postal Service (Group A) Recruitment Rules.

16. We would record that for identical reason and grounds W.P. (C) No. 5924/1999, filed by M.R. Tshering, P.D. Thsering and Vinay Kumar Tiwary was dismissed by a Division Bench of this Court vide judgment dated 9th September, 2009. This order records that the said co-applicants/ writ petitioners had participated in the CSE in 1987 and were allocated Indian Defence Estate Service or Indian Defence Accounts Service but they had not joined or participated in the foundation course in the Academy at Mussoorie, which had commenced from 26th August, 1988. Subsequently, as candidates who were better placed on merit had not joined their allocated service, the co-applicants/writ petitioners moved up the ladder and were offered Indian

Postal Service, which offer was accepted by them in September/December, 1988. They had joined probationary training at Postal Staff College at Delhi on 12th January, 1989. Their date of entering into Indian Postal Service was, therefore, 12th January, 1989. On completion of four years of service, they were promoted to the Senior Time Scale. To this extent, there was no dispute or controversy. Subsequently, these co-applicants/ writ petitioners were considered for promotion to the Junior Administrative Grade and then only they had raised controversy with regard to the date of their entry in the service. Appointment to the Junior Administrative Grade was made by selection on merit from amongst officers of the Senior Time Scale having five years of regular service in that grade. For this purpose, the cut-off date was 1st October of the concerned year in terms of the OM dated 19th July, 1989. Since the co-applicants/ writ petitioners therein, as was the case with Anju Nigam, were not eligible, they were not considered for promotion to the Junior Administrative Grade as on 1st October, 1997. As a result, they lost one year and were considered for promotion along with others in 1998. The Division Bench rejected the contention that co-applicants/writ petitioners should be deemed to have been appointed in the Junior Time Scale on or from 26th August, 1988. The claim and assertion that it was not the co-applicants/writ petitioners fault that they were allocated different services and could not undertake foundation course in the Academy at Mussoorie was rejected, stating that it was purely fortuitous that the co-applicants/writ petitioners were offered appointment to the Indian Postal Service as others had dropped out. Consequently, they cannot claim their date of entry in the service as on the date of commencement of the

foundation course. Their date of entry into service was 12th January, 1989, when they actually started their probationary training. Claim of the co-applicants/writ petitioners predicated on OM dated 7th January, 1993 was clearly rejected as not applicable to them, for they had not sought exemption from the foundation course and for other reasons stated above.

17. Anju Nigam claims that her case is factually different, for she was originally allocated Indian Postal Service as per her ranking in the CSE, 1987. This is factually correct. However, we would note that Anju Nigam was then working in the State Bank of India at Lucknow. She was informed about her selection and allotment vide letter dated 9th August, 1988 and was required to join the foundation course in the Academy at Mussoorie on 24th August, 1988. By letter dated 19th August, 1988, Anju Nigam had requested for three months' extension to join the foundation course due to her mother's illness, who it was stated was suffering from angina pain and advised rest. Anju Nigam had stated that there was no other person to attend to her mother, as her three elder sisters were married and were working, and she was required to look after her mother. By letter dated 12th September, 1988, Anju Nigam was informed that her request had been accepted. By a subsequent letter dated 16th September, 1988, written by the official respondents, Anju Nigam was informed of exemption from the foundation course, which had commenced on 25th August, 1988, and that she would receive an offer of appointment for the service from the concerned Ministry in the month of November/December, 1988. The offer of appointment would contain joining instructions. By letter dated 13th December, 1988, Anju Nigam was informed and given appointment in the Junior Time Scale

of the Indian Postal Service Group 'A' Service. For acceptance of the offer, Anju Nigam was required to report to the Director, Postal Staff College, Sanchar Bhawan, New Delhi on 12th January, 1989. In case she was not to accept the offer, a reply was required to be sent. Anju Nigam did not join on 12th January, 1989, claiming serious illness and had requested for extension vide telegram dated 23rd January, 1989. This was followed by another letter/reply dated 7th February, 1989 enclosing medical certificates for information (copy of the said medical certificates have not been enclosed). By letter dated 28th March, 1989, Anju Nigam wrote to the Director, Postal Staff College that she was fit to resume duties and would feel obliged if she was informed about the date of joining. Official respondents vide their letter dated 3rd May, 1989 had asked Anju Nigam to report to the Director, Postal Staff College by 15th May, 1989, failing which, her appointment would be terminated. Anju Nigam finally joined the Postal Staff College, Delhi on 15th May, 1989.

18. As noticed above, Anju Nigam has been given seniority above her immediate junior i.e. Vinay Kumar Tiwary. Accordingly, her date of joining/entry for all practical purposes, i.e., seniority and eligibility would be 12th January, 1989 and not 15th May, 1989. This benefit has been given and extended to Anju Nigam for purpose of eligibility for promotion in the Senior Time Scale and for granting her Junior Administrative Grade.

19. Anju Nigam missed out and was not considered for promotion to the Junior Administrative Grade by the Departmental Promotion Committee held in 1997 as she had not completed five years of service in the Senior

Time Scale on 1st October, 1997. This was in spite of the benefit given to her under Rule 20(8) and as per OM dated 7th January, 1993 and by treating her as in service from 12th January, 1989. Pertinently, her juniors were also not considered for promotion in 1997. She has not lost out on her seniority to her juniors for this reason. The Departmental Promotion Committee held on 24th September, 1997, had recommended promotion of 10 eligible officers including four officers of 1987 batch and six officers of 1988 batch including Sanjay Sharan and V.P. Singh, who had both completed five years of service in the Senior Time Scale on 28th August, 1997. They were accordingly promoted vide order No.2-2/97-SPG dated 29th September, 1997. Anju Nigam was treated as promoted to the Senior Time Scale on 12th January, 1993 and would have met and qualified the eligibility norm of five years of regular service in the said grade only in January, 1998.

20. Anju Nigam, along with others who were eligible and qualified under the Rules, was considered for promotion to the Junior Administrative Grade by the Departmental Promotion Committee held on 11th February, 1999 and was recommended for promotion to the Junior Administrative Grade along with five other officers of the 1988 batch and 13 from 1989 batch. However, in terms of the DOP&T OM No.22011/5/86-Estt.(D) dated 10th April, 1989 and OM No.22011/9/91-Estt.(D) dated 27th March, 1997, six officers from the 1988 and 1989 batches were placed above Anju Nigam. This was in view of merit assessment and better grading. As a result, six officers, who were junior to Anju Nigam in the Senior Administrative Grade, superseded her in the promotion to the Junior Administrative Grade since they were assessed as 'outstanding', whereas Anju Nigam was

assessed as 'very good'. The minutes of this Departmental Promotion Committee were recorded on 11th February, 1999. Anju Nigam had not challenged the said minutes and promotion of her juniors in OA No.2225/1997 and, therefore, we will refrain from going into the merits or demerits of the promotion granted to her juniors on merit.

21. We have been orally informed that Anju Nigam and four others had filed another OA No.1332/2000 before the Central Administrative Tribunal challenging the decision of the Departmental Promotion Committee dated 11th February, 1999 on the ground of clubbing of vacancies instead of preparing an year-wise panel. It was asserted that the clubbing was in violation of certain instructions. The captioned OA was decided on 12th February, 2002 with a direction to convene a review Departmental Promotion Committee, which was held but the position did not undergo a change. Official respondents had filed W.P. (C) No.123/2003 against the order dated 12th February, 2002, but the same was dismissed on 24th September, 2008 and was subsequently revived and listed alongwith the present writ petition. Subsequently, W.P. (C) No.123/2003 was withdrawn by the official respondents on 9th March, 2018.

22. Rule 20(3) states that selection to the Junior Administrative Grade shall be made on merits from amongst officers in the Senior Time Scale of service with five years of regular service. Lest there be any confusion or doubt, we reproduce the said Rule, which reads as follows:-

“20.(3) Junior Administrative Grade: Appointment to the Junior Administrative Grade in the Service shall be made by selection on merit from amongst officers of the

Senior Time Scale of the Service with 5 years regular service in the grade on recommendations of a duly constituted Departmental Promotion Committee.

Provided that for a period of 3 years from the date of commencement of these rules, if the eligible officers with the requisite length of service are not available, the service condition will be relaxed and officers with a minimum of 7 years of Grade 'A' service (including probation period) will be considered for promotion to Junior Administrative Grade of the Service."

Ergo, it is clear that the officer must have five years of regular service in the Senior Time Scale for being considered for promotion in the Junior Administrative Grade. The selection to the said grade is on merit, i.e., on the basis of relative assessment, viz., other eligible officers.

23. Counsel for Anju Nigam had placed reliance on *Union of India versus K.B. Rajoria*, (2000) 3 SCC 562, to submit that the expression "regular service" need not be actual physical service. Ratio in the said case, in our opinion, does not support the case of Anju Nigam, rather it supports case of the official respondents for they have acted in consonance with the said decision. In the said case, K.B. Rajoria had challenged consideration/appointment of Krishnamoorti to the post of Director General, which challenge was accepted by the High Court reversing the judgment of the Tribunal on the ground that the expression "regular service" would mean actual service to exclude backdated promotion granted to a senior officer on the junior officer being promoted in terms of applicable Rule. The Supreme Court observed that Krishnamoorti was not promoted on *ad hoc* basis, *albeit* was granted promotion with effect from the date the junior was promoted,

though the actual date of promotion was subsequent. In this context, the Supreme Court had observed that the expression “qualifying service” for eligibility for further promotion would mean the date on which, as per the Rule position, Krishnamoorti was granted promotion. This decision does not state that the original date of appointment can be backdated contrary to the Rules. As noticed above, Anju Nigam has been given benefit of promotion to the Senior Time Scale from the date her junior was granted promotion.

24. In fact, Anju Nigam seeks further relaxation and benefit beyond legal precedents, ignoring the distinction between seniority, eligibility and merit criteria fixed in the Rules for promotion [see *P. Sudhakar Rao versus U. Govinda Rao and Others*, (2013) 8 SCC 693]. As noticed above, the seniority of Anju Nigam in the post of Junior Time Scale and Senior Time Scale have been duly protected by giving her benefit under the Rule position and ensuring that her juniors do not steal a march and get seniority over her due to their date of joining. Indeed, Anju Nigam had accepted her date of joining in 1989 and had not protested or questioned the same till OA No. 2225/1997 was filed by Anju Nigam alongwith other co-applicants. This Original Application, as noticed above, has been dismissed as it was predicated on erroneous assumption that Sanjay Saran and V.P. Singh’s date of joining had been backdated whereas they were given the same benefit as Anju Nigam with reference to the date of joining of their juniors.

25. Argument of Anju Nigam that her date of actual or initial joining or appointment should be backdated would falter in law for the Rules do not

postulate or permit such backdating. In equity also, Anju Nigam's case has to be rejected for the reason that she had herself asked for extension of time for joining the Indian Postal Service by three months vide letter dated 19th August, 1988. Subsequently, by letter of the official respondents dated 16th September, 1988, she was informed about her exemption from joining the foundation course, which had commenced in the meantime on 25th August, 1988. She was also informed that the offer of appointment letter would be issued by the concerned Ministry in the month of November/December, 1988, which would contain the joining instructions. By letter dated 13th December, 1988 Anju Nigam was informed and given an offer of appointment and was required to report to the Director, Postal Staff College, New Delhi on 12th January, 1989. Again, Anju Nigam had requested for postponement of the date of joining vide her letter dated 12th January, 1989 and her telegram dated 23rd January, 1989. Subsequently, by letter dated 28th March, 1989, Anju Nigam had written to the Director, Postal Staff College stating that she was fit to assume duty and would be obliged on being informed about date of joining. By letter dated 3rd May, 1989, Anju Nigam was permitted by the official respondents to join by 15th May, 1989. Anju Nigam thereupon accepted the offer and had joined on 15th May, 1989. Before joining, as Anju Nigam was working in the State Bank of India at Lucknow, she had the option to continue in the said service and not join the Indian Postal Service. It will be rather incongruous, if not absurd, to hold that Anju Nigam should be treated as in service in the Junior Time Scale in the Indian Postal Service with effect from 26th August, 1988, when in fact she was working in the State Bank of India at Lucknow and had continued

to work there before accepting the offer of appointment and joining the Indian Postal Service in the Junior Time Scale on 15th May, 1989.

26. For the purpose of seniority and the resultant counting of service rendered in the Junior Time Scale by applying the Rule position, Anju Nigam was treated as having joined service on 12th January, 1989. Anju Nigam's grievance, as noticed above, was that her seniority was not protected and maintained in the Junior Administrative Grade. This was for different reasons and grounds. Anju Nigam lost out the said promotion on comparative merit for which her juniors were equally eligible for consideration and selection. Anju Nigam cannot protest and submit that her juniors, even if eligible, should not have been considered for promotion in the Junior Administration Grade. As recorded in paragraphs 20 and 21 above, this selection made by the Departmental Promotion Committee on comparative merit is not directly a subject matter of the present Writ Petition.

27. In the aforesaid circumstances, the Tribunal was correct in dismissing OA No. 2225/1997 wherein Anju Nigam was a co-applicant not only on merits but also on the ground of delay and laches and limitation, the reason being that Anju Nigam had accepted and agreed to the date of joining as 15th May, 1989. This date was never questioned or challenged by her till 1997, for the purpose of counting of period of service for being eligible for further promotion. Anju Nigam was rightly given benefit of Rule 20(8) of the Indian Postal Service, Group A Recruitment Rules as her junior who had joined earlier to her was eligible and promoted to the Senior Time Scale. In

accordance with the Rule position, she was also treated as promoted to the Senior Time Scale with effect from the date her junior, namely, Vinay Kumar Tiwari was considered and granted this promotion i.e. 12th January, 1993. No further benefit can be extended and given to her beyond what is stipulated in the Rules and in terms of ratio in ***K.B. Rajoria*** (supra).

28. In view of the aforesaid discussion, the writ petition has no merit and the same is accordingly dismissed. However, there would be no order as to costs.

-sd-

(SANJIV KHANNA)
JUDGE

-sd-

(S. MURALIDHAR)
JUDGE

-sd-

(HIMA KOHLI)
JUDGE

JULY 31, 2018
NA/ssn/VKR