

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on 27.8.2019**
Judgment delivered on 27/11/2019**WA No. 328 of 2018**

(Arising out of order dated 6.4.2018 passed by learned Single Judge in WPS No.1527/17)

1. Parmanand Sai S/o Shri Ratan Sai, Aged About 58 Years Occupation Superintending Engineer (Incharge Chief Engineer), Planning, Office of Engineer-In-Chief, Public Works Department, Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Appellant**Versus**

1. State of Chhattisgarh Through Secretary, Public Works Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur Chhattisgarh.
2. Chhattisgarh Public Service Commission, Through Its Chairman, Shanker Nagar Road, Bhagat Singh Square, Raipur, District Raipur Chhattisgarh.
3. J.M. Lulu, Occupation Dy. Secretary, Public Works Department, Mahanadi Bhawan, Naya Raipur, Raipur Chhattisgarh.
4. A.K. Mandan, Occupation (In-Charge Chief Engineer), Office Of Engineer-In-Chief, Raipur, District Raipur Chhattisgarh.
5. P.M. Kashyap, Occupation Incharge Superintending Engineer, Bastar Circle, Jagdalpur, District Bastar Chhattisgarh.
6. M.L. Uraon, Occupation S.E, Bridge Circle, Ambikapur, District Sarguja Chhattisgarh.

---- Respondents**WA No. 337 of 2018**

(Arising out of order dated 6.4.2018 passed by learned Single Judge in WPS No.6519/14)

1. Parmanand Sai S/o Shri Ratan Sai, Aged About 58 Years Occupation Superintending Engineer (Incharge Chief Engineer), Planning, Office of Engineer-In-Chief, Public Works Department, Raipur, District : Raipur, Chhattisgarh

---- Appellant**Versus**

1. State Of Chhattisgarh Through Secretary, Public Works Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur Chhattisgarh.
2. Chhattisgarh Public Service Commission, Through Its Chairman, Shanker Nager Road, Bhagat Singh Square, Raipur, District Raipur Chhattisgarh.
3. K.K. Pipri S/o Inderlal Pipri Aged About 50 Years R/o B-1, Pwd

Colony, Civil Lines, Raipur, Chhattisgarh Occupation Chief Engineer Bridge Pwd, District Raipur Chhattisgarh.

4. D.K. Agrawal Aged About 56 Years Working As Chief Engineer, National Highway, Pensionbada, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
5. Pandeshwar Sai Aged About 54 Years Occupation S.E. Office Of E-In-C, Raipur Chhattisgarh.
6. Santosh Kumar Kohri Aged About 46 Years Occupation S.E. Bridge Circle, Raipur Chhattisgarh.
7. Vijay Kumar Bhartpahri S/o Ramlal Bhartpahri, Aged About 44 Years Working As Chief Engineer (Planning) Office Of The Engineer-In-Chief, Shirpur Bhawan, Raipur (CG)

---- Respondents

WA No. 338 of 2018

(Arising out of order dated 6.4.2018 passed by learned Single Judge in WPS No.2548/16)

1. Gyaneshwar Kashyap S/o Shri Sukhdev Kashyap, Aged About 50 Years Presently Working As Superintending Engineer, Public Works Department, Circle-II, Raipur, District Raipur (CG)

---- Appellant

Versus

1. State Of Chhattisgarh Through The Secretary, Public Works Department Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh.
2. Chhattisgarh Public Service Commission, Through The Secretary, Shankar Nagar Road, Bhagat Singh Square, Raipur Chhattisgarh.
3. Shri D.K. Agrawal (Ce), Project Director, Asian Development Bank, Office Of E-In-C, Public Works Department, Sirpur Bhawan, Raipur, District Raipur Chhattisgarh.
4. Shri J.M. Lulu (Se), Dy. Secretary P.W.D. Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh.
5. Shri A.K. Mandan (Se), In - Charge Chief Engineer, Office Of Chief Engineer, Public Works, Department, Bilaspur, District Bilaspur Chhattisgarh.
6. Shri P.M. Kashyap (Ee) In - Charge Superintending Engineer, Technical Cell, Public Works Department, High Court Of Chhattisgarh, Bilaspur District Bilaspur Chhattisgarh.
7. Shri M.L. Uraon, Superintending Engineer, Public Works Department, Bridge Circle Ambikapur, District Sarguja Chhattisgarh.

---- Respondents

WA No. 339 of 2018

(Arising out of order dated 6.4.2018 passed by learned Single Judge in WPS No.4403/17)

1. Pandeshwar Sai S/o S/o Shri Jadura Sai Aged About 57 Years Presently Working As Superintending Engineer, Public Works Department, Kanker Circle, District- Kanker, Chhattisgarh.

---- Appellant

Versus

1. State of Chhattisgarh Through The Secretary, Public Works Department Mahanadi Bhawan, Naya Raipur, District- Raipur, Chhattisgarh.
2. Chhattisgarh Public Services Commission, Through The Secretary, Shankar Nagar Road, Bhagat Singh Square, Raipur, Chhattisgarh.
3. Shri D. K. Agrawal (Ce), Project Director, Asian Development Bank, Office Of E- In- C, Public Works Department, Sirpur Bhawan, Raipur, District- Raipur.
4. Shri J. M. Lulu (Se), Dy. Secretary, P. W. D. Mahanadi Bhawan, Naya Raipur, District- Raipur, Chhattisgarh.
5. Shri A. K. Mandan (Se), In- Charge Chief Engineer, Office Of Chief Engineer, Public Works Department, Bilaspur, District- Bilaspur, Chhattisgarh.
6. Shri P. M. Kashyap (Ee), In- Charge Superintending Engineer, Technical Cell, Public Works Department, High Court Of Chhattisgarh, Bilaspur, District- Bilaspur, Chhattisgarh.
7. Shri M. L. Uraon, Superintending Engineer, Public Works Department, Bridge Circle Ambikapur, District- Sarguja, Chhattisgarh.

---- Respondents

WA No.328/2018

For Appellant	:	Mr. Saurabh Dangi, Advocate
For Respondent No.1	:	Mr. Gagan Tiwari, Dy. Govt. Advocate
For Respondent No.2	:	Mr. Ashish Shrivastava & Mr. Sudeep Agrawal, Advocate
For Respondent No.3	:	Mr. Manoj V Paranjpe, Advocate
For Respondent No.4	:	Mr. Prateek Sharma, Advocate
For Respondent No.5	:	None
For Respondent No.6	:	Mr. K.R. Nair, Advocate & Ms. Veena Nair, Advocate
For respective Interveners:	:	Mr. Rajat Agrawal, Mr. Vijay Bhatpahari, Mr. A. Verma, Mr. Ashish Shrivastava & Mr. Sumesh Bajaj, Advocates

WA No.337/2018

For Appellant	:	Mr. Saurabh Dangi, Advocate
For Respondent No.1	:	Mr. Gagan Tiwari, Dy. Govt. Advocate
For Respondent No.2	:	Mr. Sudeep Agrawal, Advocate
For Respondent No.3	:	None
For Respondent No.4	:	Mr. Anup Mazumdar, Advocate
For Respondent No.5	:	Mr. Shantam Awasthi, Advocate.
For Respondent No.6	:	Mr. K.R. Nair, Advocate & Ms. Veena

Nair, Advocate
 For respective Interveners: Mr. Rajat Agrawal, Mr. Vijay Bhatpahri,
 Mr. A. Verma, Mr. Ashish Shrivastava &
 Mr. Sumesh Bajaj, Advocates

WA No.338/2018

For Appellant : Shri Shantam Awasthi, Advocate
 For Respondent No.1 : Mr. Gagan Tiwari, Dy. Govt. Advocate
 For Respondent No.2 : Mr. Sudeep Agrawal, Advocate
 For Respondent No.3 : Mr. Anup Mazumdar, Advocate
 For Respondent No.4 : Mr. Manoj Paranjpe, Advocate
 For Respondent No.5 : Mr. Prateek Sharma, Advocate
 For Respondent No.6 : None
 For Respondent No.7 : Mr. K.R. Nair & Ms. Veena Nair,
 Advocates

WA No.339/2018

For Appellant : Shri Shantam Awasthi, Advocate
 For Respondent No.1 : Mr. Gagan Tiwari, Dy. Govt. Advocate
 For Respondent No.2 : Mr. Sudeep Agrawal, Advocate
 For Respondent No.3 : Mr. Anup Mazumdar, Advocate
 For Respondent No.4 : Mr. Manoj Paranjpe, Advocate
 For Respondent No.5 : Mr. Prateek Sharma, Advocate
 For Respondent No.6 : None.
 For Respondent No.7 : Mr. K.R. Nair, Advocate & Ms. Veena
 Nair, Advocate
 For respective Interveners: Mr. Rajat Agrawal, Mr. Vijay Bhatpahri,
 Mr. A. Verma, Mr. Ashish Shrivastava &
 Mr. Sumesh Bajaj, Advocates

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

C A V Order

Per Parth Prateem Sahu, J;

1. This batch of four writ appeals involving a common dispute with regard to seniority between the appellants and private respondents on the post of 'Executive Engineer' were heard together and are decided by this common order.
2. Above appeals are directed against the common order dated 6.4.2018 passed by learned Single Judge in a batch of writ

petitions, leading case of which was WPS No.1522/2017, whereby the learned Single Judge declined to grant the relief claimed by the petitioners/appellants herein and disposed off the writ petitions with a direction to the respondent authorities to hold DPC for making promotion to the post of 'Chief Engineer', after holding review DPC of the DPC dated 5.9.2007 for promotion from the post of Executive Engineer to the post of Superintending Engineer.

3. Facts of the case, in brief, are that prior to 2003, appellants and private respondents were working as 'Assistant Engineer' in the Public Works Department of the State. In the light of Circular dated 1.1.2002 issued by the General Administration Department (as mentioned in Annexure R-1), the respondent Department decided to call for recommendations of the Departmental Promotion Committee to meet out urgent need. Accordingly, a meeting of Departmental Promotion Committee (for short 'DPC') was held on 31.12.2002 for promotion of Assistant Engineer to the post of Executive Engineer and thereafter a review DPC was held on 4.4.2003 in which names of some of the appellants and private respondents were under the zone of consideration for promotion to the post of Executive Engineer. Recommendations of respondent AK Mandan & some other Assistant Engineers were put in the sealed cover because it was informed to the DPC that a departmental enquiry was pending against them. Further, as the Annual Confidential Reports (ACRs) of appellant Parmanand Sai & Pandeshwar Sai

for the relevant period were not available, therefore, their cases were kept in circulation. Pursuant to recommendations made by review DPC in its meeting held on 4.4.2003, respondent DK Agrawal, and others were promoted to the post of Executive Engineer. On the basis of recommendations made by review DPC dated 4.4.2003, promotion orders (Annexure R-2) were issued on 24.4.2003 in which names of D.K. Agrawal & JS Lulu find place along with 16 others. Meeting of DPC was again held on 20.12.2005 for regularization of ad-hoc promotion of the year 2003 in which case of 25 Assistant Engineers was considered and name of appellant Parmanand Sai has been shown to be in circulation, whereas recommendation in respect of appellant Pandeshwar Sai has been kept in a sealed cover (Annexure R-4). On the same date, another meeting of DPC took place for regularizing ad-hoc promotion given to some appellants and private respondents on the post of Executive Engineer considering seniority as on 1.1.2005 (Annexure R-6) and orders were passed on 17.10.2006 (Annexure R-7). On account of superannuation as also due to imposition of punishment in departmental enquiry of some of the Assistant Engineers whose names were kept in sealed cover and were senior to the private respondents, the posts reserved for those employees were filled-up by private respondents as per their seniority and all of them have been regularized on the post of 'Executive Engineer' from the date of grant of ad-hoc promotion i.e. from the year 2003. The General Administration Department issued Circular

dated 9.1.2004 for regularizing ad-hoc promotion and other directions. Clause (ख) of the Circular (Annexure R-10).

4. Shri Parmanand Sai filed WPS No.6519/2014 seeking for his placement in the seniority list before Pandeshwar Sai. The department has already passed orders on 1.2.2014 for placing name of Parmanand Sai before Pandeshwar Sai which is one of the reliefs out of two and the second relief was for considering his name for promotion to the post of Superintending Engineer from the date on which his juniors were promoted.
5. Main grievance of petitioners/appellants was with respect to fixation of their seniority as on 1.4.2004 in the gradation list published on 5.3.2016. In the said gradation list, respondents JM Lulu, DK Agrawal & AK Mandan were placed over and above the petitioners/appellants. On 5.3.2016 itself another gradation list was published showing seniority as on 1.4.2005 and in which name of appellant Parmanand Sai has been placed above respondent JM Lulu & AK Mandan. However, pursuant to issuance of revised gradation list on 6.8.2010, the gradation list published on 5.3.2016 showing seniority as on 1.4.2005, has been amended and revised gradation list has been issued on 24.12.2016. Petitioners/appellants aggrieved by issuance of gradation list dated 24.12.2016 have approached the High Court for setting aside of the proceedings dated 12.1.2017 and correction of gradation list according to seniority list published on 5.3.2016 showing seniority w.e.f. 1.4.2005.

6. Appellant Pandeshwar Sai's case is that the private respondents therein i.e. DK Agrawal & JM Lulu (SE), AK Mandan (SE), PM Kashyap & ML Oraon were not in the zone of consideration in the ad-hoc promotion of 2003 and they have been granted ad-hoc promotion on the post of Executive Engineer in the year 2005 i.e. on 20.12.2005. As the private respondents were promoted on ad hoc basis in the year 2005 whereas appellant Pandeshwar Sai was promoted on ad hoc basis w.e.f 2003, he is senior to the private respondents on the post of Executive Engineer but in collusion with the respondent State authorities get their names above to the appellant in seniority list. He relied on Annexure P-5 & P-6. They also succeeded in review DPC for promotion on the post of Superintending Engineer on account of above mistake.
7. Appellant in WA No.338/2018 is mainly aggrieved with the promotion and seniority of DK Agrawal, who was promoted on the post of Superintending Engineer in review DPC w.e.f. 5.9.2007. Submission of the appellant, in nutshell, is that DK Agrawal was not the zone of consideration for the ad-hoc promotion proceeding but he has been regularized on the post of Executive Engineer granting seniority w.e.f. year 2003 (from the date of joining). Learned counsel submitted that fixing seniority w.e.f. 2003 on the post of Executive Engineer was erroneous.

8. Respondent State authorities as also private respondents filed reply to the writ petitions and pleaded that ad-hoc promotions given to private respondents have been regularized w.e.f. 2003. Since the Assistant Engineers, whose promotional recommendations were kept in sealed cover, were either retired from service or punishment was imposed in the departmental enquiry, the posts kept for them were deemed to have become vacant on 4.4.2003, and as per policy of the State Government, the employees have been given promotion w.e.f. date of joining on the post of ad-hoc promotion and accordingly their seniority was fixed. They have also pleaded that the DPC has been conducted on the basis of seniority as prevailing at that relevant point of time. Seniority fixed in the year 2010 has not been challenged within reasonable time and it was challenged for the first time only in the year 2017 by filing writ petition. Earlier, petitioner/appellant Parmanand Sai filed a writ petition claiming seniority above petitioner/appellant Pandeshwar Sai and that has been accorded to him by the department itself, therefore, he is now estopped from challenging the seniority fixed by the department.
9. Learned Single Judge after considering the pleadings supported by relevant documents as well as arguments advanced by learned counsel for the respective parties and also considering various decisions of Hon'ble Supreme Court, has held that challenge to fixation of seniority is barred by limitation. Learned Single Judge also held that looking to the seniority of respective

parties in the feeder cadre, the petitioners have not been superceded in their promotion on the post of Executive Engineer from Assistant Engineer. Submissions made that private respondents have been given ad-hoc promotion in the year 2005 but have wrongly been held to be regularized on the post of Executive Engineer from the year 2003 appears to be mistaken and dismissed most of the claims of the petitioners/appellants herein. Dismissal of writ petitions has given cause to the appellants to file the instant appeals.

10. Mr. Dangi, learned counsel representing appellant Parmanand Sai would submit that the learned Single Judge has not considered the pleadings made in writ petition as well as arguments advanced in support thereof, in its entirety and thereby committed mistake. Learned Single Judge failed to consider that under what rule the respondent department had granted promotion and seniority by providing promotion to ad-hoc promotees when no post was available. He submits that before recommending names of private respondents for promotion in DPC, no opinion/consent of the Public Service Commission was obtained and therefore recommendation of DPC dated 4.4.2003 cannot be said to be in accordance with law.

11. Per contra, learned counsel for the State submits that DPC for ad-hoc promotion was convened on 4.4.2003 and in Clause-14 of the said DPC, which relates to 'sealed envelope containing

recommendation' the names of officers whose promotional recommendation have been kept in sealed cover, have been mentioned. Similarly, under Clause-15 names of employees whose case for promotion was kept in circulation for want of requisite annual confidential reports, have been mentioned. He further submits that vide review DPC dated 20.12.2005 the employees promoted on ad-hoc basis were regularized. Promotions have been granted in accordance with law and there is no violation of Promotion Rules in any manner. In meeting of DPC, the employees have been considered for promotion strictly on the basis of their seniority and finding that departmental proceeding is pending against some employees, their promotional recommendations have been decided to be kept in sealed envelope and as those employees were either punished in the departmental proceedings or retired by the passage of time, therefore, the employees juniors to them have been accorded promotion and seniority w.e.f. 4.4.2003, the date on which said posts have become vacant. He also submits that the State Government has replied the query made by the Public Service Commission mentioning the Circular issued by the General Administration Department. Private respondents were appointed in the year 1984, whereas appellant Parmanand Sai was appointed in the year 1986 and as such he was much junior to the private respondents in the gradation list. He further submits that correct revised gradation list issued on 6.8.2016 on the basis of gradation list of the year 2010 does not call for any

interference. Gradation list of the year 2010 was well within the knowledge of all the appellants but none of them has challenged it before any forum or Court of law and as such, the same has attained finality. He submits that seniority already settled long back cannot be made to unsettle.

12. Referring to relief clause of writ petition, Mr. Prateek Sharma, learned counsel appearing for respondent AK Mandan, submits that the order of promotion from the post of Assistant Engineer to Executive Engineer and further promotion as well as gradation list of the year 2010 were not challenged by appellants. Correction carried out in the gradation list in the month of December, 2016 has been made basis to file writ petition without challenging gradation list of the year 2010 in which names of the appellants are appearing after the names of respondent JM Lulu & AK Mandan. He also submits that in the year 2014 appellant Parmanand had filed a writ petition in which also he only claimed seniority over one Pandeshwar Sai and the said relief was granted to him by the department itself. He has not challenged seniority of private respondents herein, who were promoted to the post of Superintending Engineer prior to 2014 and therefore claim made by appellant Parmanand Sai is not sustainable. He also submits that Annexure P-2 which has been made part of appeal, was not placed on record before the writ Court and therefore said document cannot be looked into at the appellate stage for deciding the issue. He also submits that under the Rules of Promotion there is a provision for keeping

promotional recommendation of the employees in sealed cover who though under the zone of consideration but facing departmental enquiry. Submission of learned counsel for appellants that the State Government had not replied the query raised by the Public Service Commission as well as there is no provision for granting ad-hoc promotion and seniority from the date of ad-hoc promotion, is not correct in view of documents placed on record by the State Government along with its reply.

13. Mr. Majumdar, learned counsel appearing on behalf of respondent DK Agrawal submits that all the petitioners/appellants belong to 'scheduled tribe' community and were holding equivalent post of Assistant Engineer before April, 2003. Reservation is provided for their promotion and it is not the case that the private respondents, who belong to general category, have, in any manner, affected their promotion.
14. Mr. Paranjpe, learned counsel representing respondent JM Lulu submits that delay in challenging seniority is always fatal and claim of fence sitters cannot be entertained after a long lapse of time, therefore, claim of appellants herein cannot be entertained and is liable to be dismissed on account of delay and laches. He submits that ad-hoc promotions of the year 2003 were regularized in the year 2005 on the post of Executive Engineer and from the year 2007, the respondents were promoted on the post of Superintending Engineer and now in the year 2017, the writ petitions were filed. He submits that the things settled long

back cannot be disturbed. Reliance is placed on the decisions of Hon'ble Supreme Court in the matter of Shiba Shankar Mohapatra v. State of Orissa & ors reported in (2010) 12 SCC 471 & Union of India & ors vs. Chaman Rana reported in (2018) 5 SCC 798.

15. We have heard learned counsel for the parties and perused the records.
16. So far as argument advanced by Mr. Dangi with respect to non-consultation with the Public Service Commission before recommending names of employees for promotion by referring Promotion Rules, 2003 is concerned, recommendation by the Departmental Promotion Committee has been made on 4.4.2003 and orders were issued on 22.4.2003 whereas new Rules of Promotion were notified on 3.9.2003. Further, ad-hoc promotions given to the Assistant Engineers on the post of Executive Engineer including private respondents were regularized by the DPC, wherein one of the Members of PSC was the member, which is compliance of the requirement when the regularization of promotion was made after coming of the Chhattisgarh Publics Service Promotion Rules, 2003. Private respondents were granted promotion on the post of Executive Engineer and their ad-hoc promotion was regularized w.e.f. 2003, on account of falling of posts vacant. As the regularization of promotion was done in presence of the members of the PSC, the objection raised by Mr. Dangi, is not

sustainable.

17. So far as other ground raised by learned counsel for appellants with respect to the Rules for according seniority from the date of joining on the post on the basis of ad-hoc promotion is concerned, the appellants themselves have filed the query made by the PSC as well as the Circular dated 9.1.2004 issued by the General Administration Department, Govt. of Chhattisgarh, Raipur. Clause 3 (b) of this Circular specifically provides that date of granting promotion to ad-hoc promotees if their names find place in the list of regularization of ad hoc promotees then their promotion will be regularized from the date of joining the post as ad hoc promotee. Learned Single Judge has taken note of the fact as to how they were granted regular promotion w.e.f. 2003 in Para-8 & 9 of his order which reads as under:-

“8. By another order dated 21.10.2008 (Annexure R-9) Respondent No.3 J.M. Lulu was accorded seniority from 2003 for the reason that name of one P.C. Jain was kept in sealed cover on account of pendency of criminal case against him, but since, thereafter, he has attained the age of superannuation on 30.04.2008, therefore, there is no justifiable reason for keeping one post vacant for him and this post was treated to be vacant in the year 2003 against which J.M. Lulu was granted seniority. Similarly, one K.R. Dhrashyamkar was punished in the departmental inquiry and his sealed envelope was not opened, therefore, against vacancy reserved for Dhrashyamkar, P.M. Kashyap (Respondent No.5) was allowed seniority from 2003.

9. By another order dated 29.05.2009 (Annexure R-10) A.K. Mandan (Respondent No.4) was granted seniority from 2003 and was placed below J.M. Lulu (Respondent No.3) and above Pandeshwar Sai (Petitioner in WPS No. 4403 of 2017). This seniority

was granted on account of one Umanath Sahay, whose case was kept in circulation, was not found suitable for promotion, therefore, the post kept vacant for him was treated to be available for promotion in 2003. Petitioner Parmanand Sai's case was also kept in circulation, but was later on found not suitable for promotion, therefore, vacancy reserved for him was made open and on this vacancy M.L. Uraon (Respondent No.6) was accorded seniority from 2003. Similar is the case with Gyaneshwar Kashyap (Petitioner in WPS No. 2548 of 2016), who was granted seniority from 2003, as one D.Ram's case was kept in circulation, but was subsequently found unsuitable for promotion.”

18. From perusal of above quoted portion of the impugned order it is apparent that the posts which were kept vacant in the year 2003 for the employees, who were within the zone of consideration for promotion but their recommendation for promotion has been kept in a sealed cover due to pendency of departmental proceeding against them, have become vacant on account of retirement or imposition of punishment in the departmental proceedings on those employees and therefore private respondents, who were granted ad-hoc promotion on 22.4.2003, have been regularized on the post of Executive Engineer w.e.f. 2003, treating that said posts to be vacant in the year 2003 itself. Said finding recorded by the learned Single Judge cannot be said to be an erroneous finding, particularly in view of Circular datd 9.1.2004 of the State Government i.e. General Administrative Department, and therefore the ground raised by Mr. Dangi, learned counsel for appellant Parmanand Sai is not sustainable and is hereby repelled.

19. Other submission of Mr. Dangi that Circular dated 9.1.2004

provides that a person has to be eligible for grant of regular promotion and as private respondents were not eligible for regular promotion, therefore, they have been left out, is also not acceptable for the reasons recorded by learned Single Judge in Para 8 & 9 of the order impugned. Clause-B of the said Circular mentions that ad-hoc promotion to the employees was given against the post available under the set-up and these ad-hoc promotees if found fit for regular promotion, then the effective date will be the date of joining for the purpose of ascertaining the date of joining on the promoted post and pay fixation. The grant of ad-hoc promotion and falling of post vacant kept under sealed cover due to certain valid reasons are also not disputed.

20. As regards the argument of learned counsel for appellant that the respondent State has not given any explanation with respect to query made by the PSC as to under what Rule the ad-hoc promotions and seniority from 2003 was granted to the private respondents. This submission is incorrect in view of documents filed by the appellants themselves as Annexure P-11. Perusal of Annexure R-1, which is minutes of meeting of DPC dated 4.4.2003 filed by respondent State along with its reply, makes it clear that all the private respondents have been considered for ad-hoc promotion in which name of Shri A.K. Mandan has been shown to be kept under sealed cover and name of appellant Parmanand Sai and others have been kept in circulation. In pursuance of DPC dated 4.4.2003, promotion orders promoting Assistant Engineers on the post of Executive Engineer on ad

hoc basis has been issued in which also name of private respondents find place except respondent AK Mandan, who was subsequently promoted after opening of sealed cover.

21. Other ground raised by learned counsel for appellant that he has not been granted opportunity before correcting seniority list dated 5.3.2016 in the month of December, 2016 is concerned, the Competent Authority has considered that gradation list prepared on 6.8.2010 showing seniority as on 1.4.2004, wherein name of appellant Pandeshwar Sai & others have been mentioned below DK Agrawal, JM Lulu & AK Mandan. Even appellant Parmanand Sai in his earlier writ petition sought a relief that his name be placed above Pandeshwar Sai, which was granted to him by the department itself and vide order dated 5.3.2016 his name has been ordered to be placed above said Pandeshwar Rai and below AK Mandan. Relief sought by appellant Parmanand Sai has already been granted and therefore now he is estopped from seeking any relief disturbing seniority list of the year 2004 in the year 2017.

22. Learned Single Judge has considered the verdicts of Hon'ble Supreme Court in this regard i.e. P.S. Sadasivaswamy v State of Tamil Nadu (1975) 1 SCC 152; Dayaram Asanand Gursahani v. State of Maharashtra & ors (1984) 3 SCC 35; K.R. Mudgal & ors v. R.P. Singh & ors (1986) 4 SCC 531; Shiba Shankar Mohapatra & ors v. State of Orissa & ors (2010) 12 SCC 471; Smt. Sudama Devi v. Commissioner & ors (1983) 2 SCC 1;

State of UP & ors v. Rajbahadur Singh & anr (1998) 8 SCC 685; Dinkar na Patil & anr v. State of Maharashtra & ors (1999) 1 SCC 354, wherein Hon'ble Supreme Court has considered the reasonable period for challenging seniority to be 3-4 years and if the claim is made beyond reasonable period then satisfactory explanation is required to be offered by the person approaching the Court challenging seniority. In the case at hand, appellants have not offered explanation much less satisfactory explanation for not approaching the Court within reasonable period claiming seniority but they have pleaded that there is no delay in filing petition. We do not find any error in approach of learned Single Judge in holding that challenge to seniority made by appellants in the year 2017 will be hit by delay and laches and no relief can be granted to appellants in the facts and circumstances of the case.

23. Learned Single Judge has further taken note of the fact that three orders issued on 13.7.2007, 21.10.2008 & 29.5.2009 respectively were never assailed by the petitioners/appellants, which were the basis of revised gradation list dated 24.12.2016 for the reasons best known to them. Learned Single Judge has already taken note of the verdict of Hon'ble Supreme Court in Para-44 of impugned order, which reads as under:-

“44. When a stale claim is agitated and an effort is made to unsettle the settled position, the Supreme Court has observed in H.S. Vankani and Others v State of Gujarat and Others¹³, at para 38, as under :

38. Seniority is a civil right which has an important and vital role to play in one's service career. Future promotion of a Government servant depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum-seniority etc. Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instills confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility among the Government servants and the enthusiasm to do quality work might be lost. Such a situation may drive the parties to approach the administration for resolution of that acrimonious and poignant situation, which may consume lot of time and energy. The decision either way may drive the parties to litigative wilderness to the advantage of legal professionals both private and Government, driving the parties to acute penury. It is well known that salary they earn, may not match the litigation expenses and professional fees and may at times drive the parties to other sources of money making, including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further it also consumes lot of judicial time from the lowest court to the highest resulting in constant bitterness among parties at the cost of sound administration affecting public interest."

24. Learned counsel for the appellants has not raised any argument with respect to findings given by learned Single Judge in Para-50 of order impugned wherein the learned Single Judge has recorded that even prior to passing of the order of ad-hoc promotion in the year 2003, in the seniority list/gradation list, as on 1.4.2001, respondent DK Agrawal, JM Lulu & AK Mandan have been shown to be senior i.e. at Sr. No.28, 29 & 30, whereas appellants Parmanand Sai & Pandeshwar Sai were placed at Sr. No.87 & 88, Pankaj Mohan Kashyap & ML Oraon

at Sr. No.108 & 109 and Gyaneshwar Kashyap & Gopal Ram Rawte at Sr. No.114 & 115. Aforementioned facts show that name of appellant Parmanand & Pandeshwar, if any, had to be placed in the seniority list below respondent AK Mandan at the most.

25. Learned Single Judge also recorded the fact that when original records were placed before him, it only mentions that ad hoc promotions have been made in the year 2003 itself and on that basis it has been held that mentioning of ad-hoc promotion of 2005 appears to be by mistake. The finding is based on the documents available on record i.e. order dated 22.4.2003. In the ad-hoc promotion list, name of respondent DK Agrawal is mentioned at Sr. No.9. In view of the fact appeared on record, claim of appellant Gyaneshwar Kashyap in WA No.338/19 is not sustainable. Name of respondent AK Mandan was also considered and found fit but due to enquiry his name was kept in sealed cover and after conclusion of enquiry, he was promoted.

26. So far as arguments raised by learned counsel for the appellants that learned Single Judge has not considered the decision of Hon'ble Supreme Court in the matter of UOI v. PK Rao reported in AIR 1968 SC 850 or misinterpreted it, is concerned, the same is also not sustainable in view of the discussions and reasoning assigned by learned Single Judge in the order impugned.

27. Recently, Hon'ble Supreme Court in the matter of **Union of India v. Chaman Rana** reported in **(2018) 5 SCC 758** has considered the effect of delay in challenging the seniority or promotion and held thus:-

“8. Manifestly, the cause of action first arose to the respondents on the date of initial suppression and again on the date when rejection of their representation was communicated to them, or within reasonable time thereafter. Even if the plea based on *Dev Dutt v. Union of India* reported in (2008) 8 SCC 725 be considered, the cause of action based thereon accrued on 12.5.2008. There has to be a difference between a cause of action and what is perceived as materials in support of the cause of action. In service matters, especially with regard to promotion, there is always an urgency. The aggrieved must approach the Court at the earliest opportunity, or within a reasonable time thereafter as third-party rights accrue in the meantime to those who are subsequently promoted. Such persons continue to work on the promotional post, ensconced in their belief of the protection available to them in service with regard to seniority. Any belated interference with the same is bound to have adverse effect on those already promoted affecting their morale in service also. Additionally, any direction at a belated stage to consider others for promotion with retrospective effect, after considerable time is bound to have serious administrative implications apart from the financial burden on the government that would follow by such others of promotion.”

28. For the afore discussions and law laid down by Hon'ble Supreme Court, already considered by learned Single Judge, on the issue as well as recent verdict of Hon'ble Supreme Court in Chaman Rana's case (supra) after considering its earlier decisions on issue and the fact that in substance seniority list of 2010 is challenged, we do not find any infirmity in the rationale and reasoning assigned by learned Single Judge in the order impugned dismissing claim of petitioners/appellants with regard to seniority. Appeals being devoid of any substance are liable to be dismissed and are hereby dismissed.

Sd/-
(PR Ramchandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-