

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**1. CWP No. 7768 of 2020 (O&M)
Date of Decision: 19th August, 2020**

Post Graduate Institute of Medical Education and Research and another

....Petitioners

VERSUS

Dr. Arun Kumar Jain and others

....Respondents

2. CWP No. 8147 of 2020 (O&M)

Dr. Surinder Singh Pandav

....Petitioner

VERSUS

Union of India and others

....Respondents

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN**

Present:

Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Aalok Jagga, Advocate
for the Petitioner in CWP-8147-2020.

Mr. Amit Jhanji, Advocate
for the Petitioners in CWP-7768-2020 and
for Respondent Nos. 2 and 3 in CWP-8147-2020.

Dr. D.S. Patwalia, Senior Advocate with
Mr. Kshitij Sharma, Advocate for Respondent No. 1.

Mr. Rajesh Garg, Senior Advocate with
Mr. Kshitij Sharma, Advocate
for Respondent No. 4 in CWP-8147-2020.

Mr. Namit Kumar, Advocate
for Respondent No. 1-UI in CWP-8147-2020 and
for Respondent No. 4 in CWP-7768-2020.

Dr. S. Muralidhar, J.

1. The dispute which forms the subject matter of these two petitions concerns the *inter se* seniority of two professors in the Department of Ophthalmology in the Post Graduate Institute of Medical Education and Research (PGIMER), Chandigarh.

2. The seniority list published on 20th September, 2018 showing Dr. Surinder Singh Pandav at Serial No. 35 above Dr. Arun Kumar Jain, shown at Serial No. 36, triggered the dispute. Dr. Jain approached the Central Administrative Tribunal (CAT), Chandigarh with OA No. 060/00412/2019 challenging the said seniority list. By the impugned order dated 2nd December, 2019, the CAT accepted the plea of Dr. Jain and directed that PGIMER should restore the seniority of Dr. Jain over Dr. Pandav, in the above seniority list. The review petition filed by both PGIMER and Dr. Pandav were dismissed by the CAT by its order dated 30th January, 2020.

3. Assailing the aforementioned orders dated 2nd December, 2019 and 30th January, 2020 of the CAT, Chandigarh, the present two writ petitions have been filed. While PGIMER has filed CWP No. 7768 of 2020, Dr. Pandav has filed CWP No. 8147 of 2020.

4. While issuing notice of motion in CWP No. 7768 of 2020 on 5th June, 2020, this Court stayed the operation of the impugned order of the CAT. A similar interim order was passed on 16th June, 2020 in CWP No. 8147 of 2020.

5. Pleadings having been completed in both petitions, with the consent of parties, they were taken up for final hearing through video conferencing.

6. This Court has heard the submissions of Mr. Rajiv Atma Ram, learned Senior Counsel appearing for Dr. Pandav, Mr. D.S. Patwalia, learned Senior Counsel appearing for Dr. Jain and Mr. Amit Jhanji, learned Counsel appearing for PGIMER. Dr. Rajesh Garg, learned Senior Counsel appeared for Dr. Jain in CWP No. 8147 of 2020. Mr. Namit Kumar, Advocate appeared for Union of India in both the petitions.

Background facts

7. The background facts are that in the year 1994, PGIMER invited applications to fill up two posts of Assistant Professors in the Department of Ophthalmology. Among the five candidates who applied were Dr. Pandav and Dr. Jain. The Standing Selection Committee ('SSC'), which held meetings from 19th December to 22nd December, 1994 selected Dr. Pandav and Dr. Jain. The proceedings of the SSC set out the names of selected candidates in the following order of merit:

“Dr. S.S. Pandav I

Dr. Arun K. Jain II”

8. At this stage, it is required to be noticed that the service conditions of both Dr. Pandav and Dr. Jain are governed by the Regulations framed under Section 32 of the Post Graduate Institute of Medical Education and Research, Chandigarh, Act, 1966. In terms thereof, on 18th August, 1967, the Union of India notified the Post Graduate Institute of Medical Education and

Research, Chandigarh Regulations, 1967 ('Regulations'). Regulation 34

thereof determines seniority and reads as under:

“34. Seniority:

Seniority of employees of the Institute in each category shall be determined by the order of merit in which they were selected for appointment to the grade in question, those selected on earlier occasion being ranked senior to those selected later:

Provided that the seniority interse of employees, other than the teaching staff of the Institute shall be determined by the length of continuous service on a post in a particular service:

Provided further that in the case of members, recruited by direct appointment, the order of merit determined by the Commission or the Selection Body shall not be disturbed in fixing the seniority.

Provided further that in case of two members appointed on the same date, their seniority shall be determined as follows- (a) member recruited by direct appointment shall be senior to a member recruited otherwise:

Provided further that where two or more direct recruits who were appointed on the same date and where the selection committee had not indicated their inter-se merit seniority will be determined as follows:

(a) (i)* If the direct recruits are outsider(s), the date of birth would be the deciding factor for seniority i.e. the older person would be senior.

(a) (ii) Where the direct recruits are both outsider(s) as well as insider(s), the insider(s) will rank higher in seniority vis-à-vis outsider(s): and

(a) (iii) Where the direct recruits are all insider(s). their inter-se seniority would be decided based on their inter-se seniority in the previous grade. The seniority in the previous grade being the same, their inter-se seniority would be decided based on length of service as faculty (excluding senior residents/demonstrators/tutors etc.) In case the lengths of service are also equal, the date of birth would be used to decide the issue i.e. the older person would be senior.

(b) a member appointed by promotion shall be senior to a member appointed by transfer:

(c) in the case of members appointed by promotion or other transfer seniority shall be determined according to the seniority of such members in the appointments from which they were promoted or transferred; and

(d) in case of members appointed by transfer from different cadres, their seniority shall be determined according to pay, preference being given to a member who was drawing a higher rate of pay in his previous appointment and if the rates of pay drawn are also the same, then by their length of service in those appointments and if the length of such service is also the same an older member shall be senior to a younger member.”

9. It will be noticed here that by virtue of an amendment published in the gazette on 19th November 2007, the third proviso to Regulation 34 as set out hereinabove, came to be inserted, which provided that if two or more direct recruits are appointed on the same date and “where the selection committee had not indicated their inter se merit” seniority would be determined by their age.

The provisional seniority lists

10. By an Office Order dated 17th November, 2000 both Dr. Pandav and Mr. Jain were promoted as Associate Professors with effect from 1st July, 1999. A provisional seniority list as on 30th November, 2001 was circulated showing Dr. Jain at Serial No. 42 and Dr. Pandav at Serial No. 46. On 21st December, 2005, by an Office Order of that date issued by the PGIMER, both Dr. Pandav and Dr. Jain were further promoted as Additional Professors with effect from 1st July, 2003. In the provisional seniority list as of 31st March, 2006, Dr. Jain was shown at Serial No. 37 and Dr. Pandav at Serial No. 39. In a subsequent seniority list as of 31st March 2007, which was circulated on 13th June, 2007, Dr. Jain and Dr. Pandav were shown at

Serial Nos. 35 and 37 respectively. On 23rd April 2011, an Office Order was issued by the PGIMER whereby both Dr. Pandav and Dr. Jain were promoted as Professors with effect from 1st July, 2008. In the provisional seniority list of Professors issued as on 14th August, 2015, Dr. Jain was shown at Serial No. 69 and Dr. Pandav at Serial No. 70.

11. On 23rd November, 2017 Dr. Pandav wrote to Director, PGIMER stating that prior to 2004, he was “4th in the departmental seniority list”. But after he had returned from study leave in 2006 he found that his seniority “was downgraded to 5th place without any valid reasons.” He requested that the Director review the matter and restore his seniority.

12. It must be mentioned at this stage that each of the seniority lists circulated by the PGIMER till this date were tentative/provisional seniority lists. Secondly, each of the seniority lists was common to the faculty members of all the departments of PGIMER. In other words, there was no seniority list issued separately for the Ophthalmology Department. Thirdly, although objections were filed to the provisional seniority lists by some faculty members other than Dr. Pandav, these were not disposed of by PGIMER. As a result these provisional lists remained as such.

13. A provisional seniority list of Professors of PGIMER as on 31st January 2018 was circulated on 10th February, 2018 in which Dr. Jain was shown at Serial No. 43 and Dr. Pandav at Serial No. 44. On 28th March, 2018, Dr. Pandav submitted a representation objecting to his seniority position. With this he enclosed a copy of his previous objection of 23rd November 2017 and

pointed out that it had not been disposed of as yet. He specifically urged that “as per the seniority list determined at the time of my selection, my name should feature at Serial No. 43 (after Prof. Sunil Arora) instead of 44.”

14. On 25th September 2018, acting on the above representations of Dr. Pandav, a revised seniority list was issued by PGIMER. In the covering letter issued by the Establishment Branch of PGIMER, it was *inter alia* noted as under:

“It is mentioned that the objections/representations received from the Professors of different Department till date have been examined and necessary corrections in the gradation list have been made wherever required.”

The faculty members were requested to check the entries against their name and to inform if there was any error or discrepancy in the list. It was further added that the gradation list was subject to final outcome of the court cases instituted by various faculty members.

15. In the revised seniority list issued on 25th September, 2018 reflecting the seniority of Professors of PGIMER as of 31st July 2018, Dr. Pandav was shown at Serial No. 35 and Dr. Jain at Serial No. 36. This led to Dr. Jain, making a representation dated 16th October, 2018 to the PGIMER seeking restoration of his seniority as it stood prior to the revision. Thereafter, Dr. Jain filed OA No. 060/00412/2019 in the CAT, Chandigarh challenging the revised seniority list.

Impugned order of the CAT

16. In the impugned order dated 24th December 2019, allowing Dr. Jain’s application, the CAT, Chandigarh came to the following conclusions:

(i) As was apparent from the admitted facts, if no objections are received within 30 days from the date of issuance of the provisional/tentative list, then PGIMER treated the provisional list itself as the final list. Thus, the plea taken by the PGIMER and Dr. Pandav that the seniority lists issued from 2001 till 2017 were only provisional/tentative and did not create any vested right was “too farfetched” and had to be “rejected *in toto*”.

(ii) Referring to the decisions in *State of Madhya Pradesh v. Bhailal Bhai AIR 1964 SC 1006*; *R.N. Bose v. Union of India, AIR 1970 SC 470*; *Malcom Lawrence Cecil D’Souza v. Union of India (1976) 1 SCC 599*; *R.S. Makashi v. I.M. Menon AIR 1982 SC 101*; *Dayanand Asanand v. State of Maharashtra AIR 1984 SC 850*; *K.R. Mudgal v. R.P. Singh AIR 1986 SC 2086*; and *B.S. Bajwa v. State of Punjab AIR 1999 SC 1510*, the CAT observed that

“the principle of sit-back theory has been followed by courts of law to ensure that the settled things are not unsettled after delay and if a right has accrued in favour of a party, then he has a reasonable belief that the same would not be taken back from him as in this case the first seniority list was issued in 2001 and upto 2018 (Annexure A-9), the applicant was shown as senior to respondent no. 4.”

(iii) It was further observed that when Dr. Pandav himself chose not to challenge the seniority lists issued from time to time, he cannot be permitted to unsettle the settled position after a long period of more than two decades “even if there be an administrative error.”

- (iv) The CAT further referred to its own decision dated 28th March, 2018 in the case of ***Professor Arunanshu Behera v. Union of India*** (OA No. 060/00336/2017), which was set aside by this Court by the decision dated 29th January, 2019 in CWP Nos. 10203 and 11433 of 2018. The CAT noted that this Court had held that a belated claim could not be revived ignoring the settled sit-back principle.
- (v) The CAT also distinguished the decisions relied upon by Dr. Pandav including ***Madras Port Trust v. Hymanshu International 1979 AIR (SC) 1144; Raj Kumar Batra v. State of Haryana 1992 (1) SCT 129; Santosh Kumar Shivgonda Patil v. Balasaheb Tukaram Shevale (2009) 9 SCC 352*** and ***Mrs. Asha Rani Lamba v. State of Haryana 1983 (1) SLR 400*** and held that

“in the name of principle that delay bares a remedy through a court of law and it does not apply to the department, the respondents cannot be allowed to unsettle settled things more so in view of the law declared in the indicated case that even if there be no limitation for revision, even then such review has to be carried out within a reasonable time and in this case the things which were settled in 2001 are sought to be unsettled in 2018, which is not permissible, at all, from any angle.”

Interim order

17. It must be noted at this stage that during the pendency of Dr. Jain's OA before the CAT, Chandigarh, Dr. Pandav was appointed as Head of the Department ('HOD'). An order was passed on 8th May, 2019 by the CAT declining to stay the revised seniority list challenged by Dr. Jain or restrain the PGIMER from finalizing it and taking further action for promotion to the

post of HOD. The CAT clarified in the said order that its observations would not have any effect on the final adjudication of the issue involved in the OA.

18. Aggrieved by the order dated 8th May, 2019 of the CAT, Dr. Jain filed CWP No. 13186 of 2019 in this Court. The said writ petition came to be disposed of by this Court by order dated 15th July, 2019 directing the CAT to decide the main application of Dr. Jain finally within four weeks. Till then, “just to balance the equities”, the Director, PGI was directed to nominate a professor to discharge the duties of HOD to avoid disruption in the office. It was made clear that the observations of the Court would not influence the outcome of the OA pending before the CAT. This Court explained that it was passing the said order since Dr. Pandav “*prima facie*, could not be permitted to discharge the duties of HOD after disturbing the seniority, that too after 22 years”.

19. As already noted, by separate orders dated 5th and 16th June, 2020 in each of the present petitions, this Court stayed the operation of the impugned final order of the CAT allowing Dr. Jain’s OA.

Inter-se merit at the time of selection

20. One of the first issues to be decided is whether in fact the proceedings of the SSC of 19-22nd December 1994, referred to hereinbefore, could be said to have determined the order of *inter se* merit of Dr. Pandav and Dr. Jain at the time of their selection as Assistant Professors of Ophthalmology at PGIMER. This question arises because the first contention of Mr. Patwalia, learned Senior counsel appearing for Dr. Jain, was that merely because in

the proceedings of the SSC, 'I' and 'II' were indicated against the names of Dr. Pandav and Dr. Jain respectively, it did not mean that this was in fact their *inter se* merit position. He referred to a document dated 13th December, 2010, containing the recommendation of SSC of PGIMER of selection to the post of Assistant Professor (Ophthalmology) indicating the order of merit, wherein there are clear columns titled 'General' and 'Merit' and the merit position of each selected candidate was clearly indicated.

20. Mr. Amit Jhanji, learned Counsel appearing for the PGIMER, on the other hand, contested the above submissions and drew the attention of the Court to the proceedings of SSC for other contemporaneous selections held in December, 1994 and thereafter till 1999. These showed that the practice till 1999 in the PGIMER was to show, alongside the name of the selected candidate, the corresponding merit position either by writing 'I' and 'II' or prefixing the name with '1' and '2'. In other words, the stand of PGIMER is that proceedings of the SSC of December, 1994, vis-a-vis the selection of Dr. Pandav and Dr. Jain, did in fact reflect their *inter se* merit position.

21. Having carefully considered the above submission, the Court is of the view that the proceedings of 19-22nd December, 1994 of the SSC, selecting Dr. Pandav and Dr. Jain as Assistant Professors, do in fact reflect their *inter se* merit position. This is critical for appreciating the next issue that arises, viz., whether in terms of Regulation 34, Dr. Pandav should have been considered senior to Dr. Jain in view of the aforementioned *inter se* merit position?

Inter se seniority

22. Mr. D.S. Patwalia, learned Senior Counsel was categorical that Dr. Jain was not questioning the applicability of Regulation 34 to the issue of determining the *inter se* seniority of Dr. Pandav and Dr. Jain. His contention, however, was that since the proceedings of the SSC of 19-22nd December, 1994 did not reflect the *inter se* merit position of Dr. Pandav and Dr. Jain at the time of their section as Assistant Professors, Dr. Jain should, being older to Dr. Pandav, be considered to be senior in terms of the third proviso to Regulation 34. With this Court having rejected that contention, the sequitur is that with both Dr. Pandav and Dr. Jain having been appointed as Assistant Professors on the same day, and with Dr. Pandav being above Dr. Jain in the order of their *inter se* merit at the time of selection, Dr. Pandav was senior to Dr. Jain. In other words, in the provisional seniority list of Assistant Professors as of 15th December 2001, it was a mistake to have shown Dr. Jain at Serial No. 42 above Dr. Pandav at Serial No. 46.

Delay in questioning the seniority list

23. The issue that arises next is whether this obvious mistake, which was left uncorrected for a period of 17 years thereafter, could be rectified by PGIMER acting on the representation of Dr Pandav made first on 23rd November 2017 and reiterated on 28th March, 2018?

24. Mr. Patwalia's principal contention on behalf of Dr. Jain is that Dr. Pandav cannot, after nearly two decades, be permitted to unsettle a settled position of seniority. It is pointed out that Dr. Pandav did not make any claim of seniority *qua* Dr Jain by filing any objection to the provisional

seniority lists issued till January 2018. It is submitted that even in Dr. Pandav's first representation dated 23rd November, 2017 there was no claim against the seniority assigned to Dr Jain. It is contended that if no objections were filed within 30 days of the issuing of a tentative/provisional seniority list, it is deemed to have become final. In particular, reliance has been placed on the decisions in ***Malcom Lawrence Cecil D'Souza v. Union of India, (1976) 1 SCC 599; R.S. Makashi v. I.M. Menon (1982) 1 SCC 379; K.R. Mudgal v. R.P. Singh, (1986) 4 SCC 531; B.S. Bajwa v. State of Punjab, (1998) 2 SCC 523*** and ***Veena Kothavale v. Union of India, 2018 SCC OnLine Del 6712***.

25. Reliance was also placed by Mr. Patwalia on the decision of this Court in ***Prof. Arunanshu Behera (supra)*** to urge that PGIMER's stand in that case was diametrically opposite to the stand taken here as regards the settled position of seniority not being allowed to be disturbed after several years. In response to a specific query whether in the intervening years between 1995 and till date, there was any occasion for either Dr. Pandav or Dr. Jain to be considered for any merit based promotion on the basis of their seniority, Mr. Patwalia answered in the negative, but pointed out that the post of Dean of the Department would fall vacant sometime during the next year for which their *inter se* seniority would be relevant. He further submitted that Dr. Jain had been given temporary charge of HOD on several occasions and this too hinged on their *inter se* seniority.

26. The stand of Dr. Pandav, as articulated by his Mr. Rajiv Atma Ram, learned Senior Counsel appearing for him, is that although Mr. Pandav

himself may not have filed objections to the provisional seniority lists issued by PGIMER from time to time, several other faculty members had and the said objections were not disposed of by PGIMER till 25th September 2018. Consequently, all previous seniority lists remained provisional/tentative and no rights could enure to anyone as a result thereof. Referring to the decisions in ***Dr. D.N. Bhardwaj v. State of Punjab 1993 (2) SCT 171*** and ***Ved Pal Mor v. State of Haryana 1999 (1) PLR 273***, he urged that tentative seniority lists do not create any vested right and Dr. Jain cannot invoke the rule of estoppel against Dr. Pandav. Reference was also made to the decisions in ***R.S. Ajara v. State of Gujarat (1997) 3 SCC 641*** and ***G.D. Doval v. The Chief Secretary Government of U.P. 1984 AIR (SC) 1527***.

27. At this stage, it is necessary to note the stand of PGIMER on the issue.

On 15th June, 2020 in the present petitions, this Court passed an order *inter alia* requiring as under:

“The affidavit to be filed on behalf of the petitioners-PGI should also indicate as to whether the assumed seniority of respondents No. 1 and 2 as Assistant Professor was considered at the time of their promotion/placement from Assistant Professor to Associate Professor; subsequently, from Associate Professor to Additional Professor; and similarly from Additional Professor to Professor.”

28. Pursuant thereto, an additional affidavit had been filed by a Senior Administrative Officer of PGIMER *inter alia* clarifying that both Dr. Pandav and Dr. Jain were promoted successively from the post of Assistant Professor to Associate Professor, as Additional Professor and finally as Professor under the Assessment Promotion Scheme (APS) and on the same dates. It is stated that the above promotions under the APS were “made without linkage to the vacancies in the respective grade.” This was

consistent with the APS introduced by the Government of India by a letter dated 24th December 1991, which stood extended to the PGIMER. In other words, such promotions were not made on sanctioned posts. In a tabular form it is shown how in PGIMER there are at present only four posts of Additional Professors and two posts of Assistant Professors, which are sanctioned. However, at present 143 faculty members are working on the said posts of which 138 were promoted under APS. It is thus sought to be shown that the promotions of both Dr. Pandav and Dr. Jain under the APS were “without linkage to vacancies”.

29. In the rejoinder filed in CWP No. 7768 of 2020, the above position is reiterated by PGIMER. It is clarified that the charge of acting HOD was not assigned on the basis of seniority. It is contended that no indefeasible right has accrued in favour of Dr. Jain by virtue of the provisional/tentative seniority lists published prior to 25th September, 2018. Mr. Jhanji has also sought to distinguish the decision in **Prof. Arunanshu Behera** (*supra*) pointing out that the fact situation therein was entirely different.

30. From the reply filed by the PGIMER, it is clear that the fixing of Dr. Jain’s seniority above that of Dr. Pandav in the first tentative seniority list issued in 2001 was on account of a *bona fide* mistake. Since it is plain that both were appointed on the same day as Assistant Professors and in the order of merit Dr. Pandav was above Dr. Jain, in terms of Regulation 34, Dr. Pandav ought to have been shown senior to Dr. Jain. That the seniority lists issued from 2001 till 31st January, 2018, are only tentative/provisional, is also not in dispute. The Court is unable to agree with the contention of Dr.

Jain that since no objection had been filed by Dr. Pandav to those tentative/provisional seniority lists within 30 days after they were issued, they became final. In fact, the CAT in para 14 of the impugned order appears to have proceeded on that premise. The fact of the matter is that since other faculty members whose names figured in those seniority lists had in fact filed objections within time and which were not disposed of by the PGIMER, it cannot be said that such tentative/provisional seniority lists stood finalized. The position becomes clear when one examines the letter dated 25th September 2018, accompanying the revised seniority list circulated with that letter. It clearly states that the seniority list as it stood on 31st July, 2018 was being circulated after examining the objections/representations received “from the professors of different departments till date”. This is perhaps for the first time the revised seniority list was issued by the PGIMER after disposing of the objections.

31. In any event, each tentative/provisional seniority list could be objected to by any of the faculty members whose name figured therein. The objection filed by Dr. Pandav on 23rd March 2018 to the provisional list as of 31st January, 2018 was considered and the revised seniority list came to be issued on 25th September 2018. No illegality attaches to this process.

32. It is, therefore, not possible to accept the contention of Dr. Jain that only because Dr. Pandav did not file objections to the earlier provisional/tentative seniority lists issued between 2001 and 2018, he was precluded from objecting to the tentative seniority list as of 31st January, 2018, which objections were accepted and a revised seniority list issued on 25th

September, 2018. With all the promotions of Dr. Pandav and Dr. Jain between 1995 and 2011 having taken place under the APS, and not linked to either the seniority position or the availability of vacancy, no vested right accrued in favour of Dr. Jain which stood taken away by the issuance of the said revised seniority list on 25th September 2018.

Discussion of case law

33.1 In support of the plea that it was open to an authority to rectify a mistake that was contrary to the applicable rules or statute, reliance was placed by Mr. Rajiv Atma Ram, learned Senior counsel for the Petitioners on the decision in ***State of Punjab v. Jagdip Singh 1964 AIR SC 521***. The facts there were that four writ petitions had been filed in the High Court of Punjab challenging a Notification dated 31st October, 1957 of the Government of Punjab ‘de-confirming’ the Petitioners in the permanent posts of Tehsildars and according them the rank of officiating Tehsildars. Earlier by a notification dated 23rd October 1956, seven Tehsildars including the four writ petitioners (who were Respondents in the High Court) had been confirmed as Tehsildars with immediate effect. Since the posts were not available, the seven supernumerary posts were created. De-confirmation took place when it was brought to the notice of the Government that conformation had taken place even before the creation of the seven supernumerary posts. Allowing the appeal of the State of Punjab, the Supreme Court held that the challenge to the order of de-confirmation should fail. It was held that the order of Financial Commissioner confirming the Respondents had no legal foundation since there being no vacancy in which conformation could take place. The Supreme Court held that the

Appellant/Punjab Government that it was competent to rectify a mistake. It could not be viewed as an act of reduction the rank causing prejudice to the Respondent.

33.2 In the same vein in **Raj Kumar Batra v. State of Haryana** (*supra*), it was reiterated that the jurisdiction of the Government to undo injustice at any stage cannot be doubted. It was explained as under:

“The remedies before a Court may be barred by delay. However, the Government’s jurisdiction to undo injustice at any stage cannot be doubted. The Government had the discretion to reject the claim on account of delay. In the circumstances of the case, it has chosen not to do so. It was in all likelihood influenced by the fact that juniors had been deputed for training without prejudice to the rights of the seniors. In such a situation, the Government may have thought that it would not be fair to prejudicially affect the rights of the seniors. It has accordingly taken the impugned decision. I do not find the action of the Government to be either lacking in jurisdiction or in propriety.”

33.3 The same principle was reiterated by a Division Bench of this Court in **Ved Pal Mor v. State of Haryana** (*supra*), where it was observed as under:

“14. It is undoubtedly correct that whenever a matter is brought to the Court, delay is one of the factors which is taken into consideration. Even though no limitation has been specifically provided for approaching the Court under Article 226 of the Constitution, yet the rule of refusal to interfere on the ground of delay is invariably followed by the Court. Despite the fact that no period of limitation has been specifically laid down, the Court rejects a complaint whenever there is unexplained delay or even when a triable issue of limitation arises. However, this rule of delay does not govern administrative action. Whenever an authority finds that an error has been committed, it has the undoubted jurisdiction and discretion to rectify the mistake.”

33.4 The distinction between a tentative/provisional seniority list and one yet to be finalized was brought out by the Supreme Court in **G.D. Doval v. The**

Chief Secretary Government of U.P. (supra), where the Petitioners had been inducted as Khandsari Inspectors between March, 1960 and 1964. Respondent Nos. 4 to 19 had also been recruited as Khandsari Inspectors on different dates. The dispute arose with regard to their *inter se* seniority in the cadre of Khandsari Inspectors. The grievance of the Petitioners was that in the provisional seniority list circulated on 22nd March 1971, they were shown junior to Respondent Nos. 4 to 19, although the Petitioners had been recruited earlier. In resisting the challenge, it was pointed out by the Government of U.P. that the Petitioners had moved the Court belatedly in 1983 and therefore the petitions ought to be dismissed on the ground of delay and laches. While rejecting this plea, the Supreme Court observed as under:

“We are not disposed to accede to this request because respondents 1 to 3 have not finalized the seniority list for a period of more than 12 years and are operating the same for further promotion to the utter disadvantage of the Petitioners. Petitioners went on making representations after representations which did not yield any response, reply or relief. Coupled with this is the fact that the Petitioners belong to the lower echelons of service and it is not difficult to visualize that they may find it extremely difficult to rush to the Court. Therefore, the contention must be rejected.”

33.5 This Court in **Dr. D.N. Bhardwaj v. State of Punjab (supra)** in deciding a dispute concerning to *inter se* seniority of two professors in Government Medical College, Rajendra Hospital, Patiala held that since the service itself was created only in 1978, the rules were made for the first time, the gradation list issued prior thereto ‘only tentative and no claims could be based upon the authorities on the basis of statement in such tentative gradation list’. The plea that the Appellant had raised the challenge

belatedly was negated since no final seniority list had been prepared under the 1978 Rules. It was observed as under:

“The seniority as mentioned in gradation list, was only tentative and mere existence of a tentative gradation list did not affect the rights of Dr. Bhardwaj. It was only when the question of the promotion of Dr. D.N. Bhardwaj was involved that the determination of seniority was of some importance and consequently Dr. D.N. Bhardwaj made a representation to the Government for the rights of a person for getting his seniority determined.”

33.6 Likewise, the decision in *Anil Vishwash v. Haryana State Electricity Board 1992 (3) SCT 367* supports the plea on behalf of Dr. Pandav that a tentative seniority list, which is subject to review and change, cannot vest inalienable rights which cannot be interfered with by the authorities. Even the promotion made on the basis of a tentative seniority list, cannot confer a vested right.

34.1 On the other hand, the decisions cited by Mr. Patwalia concern situations where seniority that had attained finality was sought to be disturbed after several years.

34.2 Since Mr. Patwalia has placed considerable reliance on the decision of the Supreme Court in *Malcom Lawrence Cecil D'souza v. Union of India (supra)* it is proposed to be discussed in some detail. The factual background there was that a seniority list of Additional Commissioners of Income Tax was circulated by the Ministry of Finance, Government of India in 1971. The said seniority list was based on an earlier one issued in 1956 of Income Tax Officers Class I, which list was issued pursuant to the Seniority Rules, 1952. In both the 1956 and 1971 seniority lists, the Petitioner/Malcolm

D'souza was placed below the Respondent Nos. 4 to 26. His grievance was that he was promoted prior to them as Assistant Commissioner and therefore, ought to have been placed above them in the 1971 seniority list.

34.3 The Supreme Court rejected the Petitioner's challenge on two grounds. The first was that the position in the 1956 seniority list had been reiterated in the one issued in 1958, whereas the Petitioner, after a lapse of nearly 13 years, had challenged a seniority list issued in 1971, which, according to the Court, "merely reflected the seniority of the petition qua those respondents as already determined in 1956". There is no indication in the judgment that the 1956 and the 1958 seniority lists were provisional ones that had not attained finality.

34.4 The second factor which weighed with the Supreme Court was that promotions had already been made on the basis of the seniority list under challenge, within a reasonable time. In other words, based on the impugned seniority list, the positions of the persons whose names figured therein had changed.

34.5 In the present case, as already noticed, the seniority list till September, 2018 continued to remain provisional/tentative. The promotions of Dr. Pandav and Dr. Jain were under the APS and were not linked to their respective positions in the provisional seniority lists. Consequently, this decision is not of any assistance to Dr. Jain.

34.6 In ***Veena Kothavale v. Union of India*** (*supra*), the Petitioner had challenged a seniority list drawn up in the 2015. A seniority list had been issued in 2010 and the seniority position therein was reiterated in the seniority lists issued in 2011 and 2014. The Respondent Nos. 1 to 4/State had contended that a revised seniority list was required to be issued in 2015 pursuant to the Supreme Court's decision in ***Union of India v. N.R. Parmar*** (2012) 13 SCC 340.

34.7 There is a clear observation of the Court in para 69 that the Respondents had unsettled "the seniority lists, which stood settled since, 2010". It was in light of this that the Court proceeded to then observe that the action of the Respondent Nos. 1 to 4/State in revising the seniority list was unjustified. Therefore, the subject matter in ***Veena Kothavale*** as well was a 'settled' seniority list, which was sought to be unsettled, unlike in the present case where the earlier seniority lists, against which objections had been filed and had not been disposed of, continued to remain provisional/tentative.

34.8 In ***K.R. Mudgal v. R.P. Singh*** (*supra*), what had been questioned was "the validity of the appointments of officials, who have been appointed more than 32 years ago". The appointments were of Assistants in the Intelligence Bureau ('IB') and the challenge was to the assignment of seniority on the basis of such appointments. The challenge arose as a result of reorganization of the ministerial posts in the IB and the consequential promotions from the posts of UDCs to the posts of Assistants against 15% quota of promotees prescribed in the re-organization scheme. This was an instance of a

challenge to a seniority list, which sought to rearrange the seniority between two sets of employees, one who was promoted on the basis of reorganization scheme and the other, who continued in service but their services had not been confirmed.

34.9 It was noted in para 7 of the judgment by the Court that promotions had already been made on the basis of seniority lists that had been “issued from time to time from the year 1958”. It was in these circumstances that it was observed that the challenge to a seniority list of 1976, which had been issued 18 years after the first draft seniority list was published in 1958, was belated and barred by laches. Clearly, therefore, on facts the said decision is distinguishable and has no application to the case on hand.

34.10 Another decision relied upon by Mr. Patwalia is ***R.S. Makashi v. I.M. Menon*** (*supra*). The dispute there concerned the issue of fixation of the seniority of personnel appointed to Controller of Foodgrains Distribution (‘CFD’), which comprised of persons drawn from different streams, without there being any specific qualification for appointment to various posts. The posts in the CFD were equated with the newly created posts in the Bombay Rationing Organization (‘BRO’) that was newly created in 1956. The former CFD personnel were sought to be integrated with the staff appointed in the BRO, which was governed by the Bombay Rationing Organisation (Fixation of Seniority) Rules, 1968. A gradation list was published on 28th May, 1971, which had been drawn up in accordance with the seniority principles enunciated in the Government Resolution dated 22nd March, 1968. A final gradation list as of 1st April, 1968 was published. Later, on 9th April, 1973,

another provisional gradation list of personnel as on 1st April, 1972 was published. This was followed by the publication of two gradation lists on 18th November, 1975.

34.11 The Supreme Court noted that the Government Resolution dated 28th March, 1968 had come to the knowledge of the Petitioners when the provisional lists on 28th May, 1971, was circulated followed by the final list on 23rd November, 1972. At that stage, no objections had been filed by the Petitioners against their ranking in those gradation lists. Again, to a subsequent list published in April, 1973, no objections had been filed. The Controller of Rationing had informed the Petitioners in December, 1973 itself that their representations had stood rejected, since seniority and rank assigned to them in the provisional gradation list were in strict conformity with the principles laid down in the Government Resolution of 1968. Since the Petitioners had not done anything about it and had only on 31st January, 1976 approached the High Court, the Court held that they had not furnished any valid explanation for the “inordinate delay on their part in approaching the Court with the challenge against the principles of seniority laid down in the Government Resolution of 1968”.

34.12 In the present case, there is, in the first place, no question of a challenge to the seniority rules themselves, as both Dr. Pandav and Dr. Jain have accepted that Regulation 34 of the Regulations applies to each of them. The second important distinction is that when the objections raised by Dr. Pandav were acted upon, a revised seniority list was issued in September, 2018, leading to a challenge by Dr. Jain before the CAT. Since, till that point

the objections to the earlier tentative seniority lists were not disposed of, there was no occasion to raise any challenge to the revised/finalized seniority list. These factors distinguish the case on hand from those forming the basis of the decision in ***R.S. Makashi*** (*supra*).

34.13 The next decision relied upon is ***B.S. Bajwa v. State of Punjab*** (*supra*). The facts there were that there was a challenge to a gradation list of Superintending Engineers ('SE') in the Public Works Department. The Petitioners i.e. B.S. Bajwa and B.D. Gupta had throughout been shown below 5 others, who had got their promotions as Executive Engineers (Select Grade) and then as SE, prior to them. This was the position from 1971/1972, the respective years in which B.S. Bajwa and B.D. Gupta joined the department. It was however only in 1984 that B.S. Bajwa and B.D. Gupta filed a writ petition in the High Court claiming an earlier date of appointment in the department.

34.14 The Supreme Court held that during the entire period of more than a decade i.e. between 1971/72 to 1984, B.S. Bajwa and B.D. Gupta had long been treated as junior to five other persons and "the rights inter se had crystallized which ought not to have been re-opened after the lapse of such a long period". It was plain to the Court that acting on the gradation list, promotions had been granted, which had not been objected to. It was also noted that B.S. Bajwa and B.D. Gupta had initially joined the Army and on their release from there had joined the PWD. Their position in the gradation list was shown with reference to the respective dates of joining upon leaving the army.

34.15 The facts in the present case are entirely different, as Dr. Pandav and Dr. Jain had joined on the same date and had been getting promotions throughout on the same dates. Further, there is no indication in the decision in *B.S. Bajwa v. State of Punjab (supra)* that the gradation list was provisional and had not attained finality.

35. In view of the settled legal position, it is plain that in the present case, the provisional/tentative seniority lists circulated by PGIMER did not create any vested right in favour of Dr. Jain. It was open to PGIMER to have corrected the mistake in assigning the right seniority to Dr. Pandav in the earlier provisional seniority lists when it issued the list dated 25th September 2018.

The decision in Prof. Arunanshu Behera's case

36.1 The facts of the present case distinguish it from that of Prof. Arunanshu Behera, the decision in whose case has been referred to by the CAT and relied upon before us by Dr. Jain. The facts therein were that in a selection for the post of Professor (General Surgery) in the PGIMER, there were three candidates i.e. Prof. Gurpreet Singh, Prof. Behera and Prof. G R Verma. In the selection Prof Singh was at No.1 in the order of merit and Prof. Behera at No. 2. Prof. Verma was in the waiting list.

36.2 Prior to this, all three had already availed of promotions up to the post of Additional Professors under the APS. Prof. Behera had himself been retrospectively promoted as Associate and Additional Prof. with effect from 1st July 1999 under the APS. Prof. Singh and Prof. Verma being due for

promotions as Professors under the APS opted for that route and were by an order dated 21st December 2005 given promotions retrospectively from 1st July 2002. Prof. Behera was appointed as a directly recruited Professor with effect from 21st December 2005 by an order of that date.

36.3 In the provisional seniority list of Professors issued on 17th August 2006, Prof. Singh and Prof. Verma figured at Serial Nos. 51 and 56 respectively, whereas Prof. Behera figured at Serial No. 83. Prof. Behera raised an objection on 16th July, 2007 that three Professors shown at Serial Nos. 60, 66 and 67 had joined later as directly recruited Professors and, therefore, could not have been shown senior to him. Prof. Behera did not at this stage object to the seniority assigned to Prof. Singh and Prof. Verma.

36.4 Nine years later, on 19th August 2016, Prof. Behera raised an objection to the seniority assigned to Prof. Singh and Prof. Verma. His contention was that since his direct recruitment as Professor and that of the promotion of Prof. Singh and Prof. Verma as such under the APS was on the same date i.e. 21st December 2005, he (Prof. Behera) being the direct recruit should be shown senior to them.

36.5 PGIMER by its decision dated 4th January, 2017 rejected Prof. Behera's representation by pointing out that Prof. Singh and Prof. Verma had been promoted with effect from 1st July, 2002, whereas Prof. Behera was directly recruited on 21st December 2005. Therefore, their *inter se* seniority had been correctly determined.

36.6 Prof. Behera then approached the CAT with an application challenging the order dated 4th January 2017. PGIMER resisted the application contending that the claim was barred by delay and laches as well as estoppel.

36.7 The CAT rejected the above objection by holding that the seniority list circulated on 17th August, 2006 was only a provisional one since the objections thereto had not been disposed of. The CAT referred to the proviso to Regulation 34 and held that since there was no scope for retrospective promotion under the APS, and since the direct recruitment of Prof. Behera and the promotion of Professors Singh and Verma under the APS was on the same date, Prof. Behera should be senior to them. PGIMER then challenged the decision of the CAT before this Court.

36.8 This Court reversed the decision of the CA, holding that the CAT “was not justified in entertaining the petition and the same was liable to be dismissed on the ground of limitation and delay and laches.” Importantly, this Court further noted that Prof. Behera “was estopped from challenging the grant of retrospective seniority” to Prof. Singh and Prof. Verma with effect from the date of their eligibility under the APS, “himself being a beneficiary of retrospective promotion under that Scheme at an earlier stage in his service career.”

37. There is merit in the contention of PGIMER and Dr. Pandav that the latter’s case stands on a different footing from that of Prof. Behera. In the first place, the issue there was between two promotee Professors and one directly recruited, whereas in the case on hand both Dr. Pandav and Dr. Jain

who were initially directly recruited Assistant Professors were thereafter successively promoted under the APS. Thus, they were both promotee Professors. The dates of appointment of Professors Singh and Verma as Professors on the one hand differed from that of Prof. Behera by nearly three years. Here, both Dr. Pandav and Dr. Jain were promoted on identical dates. Consequently, a different proviso of Regulation 34 applies in the instant case. Another important distinction is that when Prof. Behera first objected in 2007 to the seniority list, he did not question the assignment of the seniority to Prof. Singh and Prof. Verma above him. As pointed out by this Court in that case, Prof. Behera having himself benefited from the retrospective promotion under the APS, was estopped from questioning the grant of such promotion as Professors to Prof. Singh and Prof. Verma. No such issue arises here.

38. In Prof. Behera's case PGIMER was not inclined to accept his contention. In the instant case, however, PGIMER made the correction, since the provisional/tentative seniority list as on 31st January 2018 had not attained finality and the proviso to Regulation 34 clearly applied. Consequently, this Court fails to appreciate how the decision in Dr. Behera's case can be of assistance to Dr. Jain.

Conclusion

39. The position that emerges from the discussion of the above case law, is that a *bona fide* mistake in assigning seniority in terms of applicable regulations, can always be corrected by the concerned authority, particularly when the seniority lists issued till the date of such selection were only

provisional/tentative. Further, since no vested right in favour of Dr. Jain stood created as a result of the provisional/tentative seniority lists, the issuance by the PGIMER of the revised seniority list on 25th September, 2018 showing Dr. Pandav as senior to Dr. Jain cannot be said to have caused any prejudice to Dr. Jain.

40. For all the aforesaid reasons the Court is of the view that the CAT was in error in allowing Dr. Jain's OA and directing the PGIMER to restore his seniority as it stood on 31st January, 2018. The impugned judgment dated 24th December, 2019 allowing Dr. Jain's OA and the order dated 30th January, 2020 passed by the CAT dismissing the review applications of PGIMER and Dr. Pandav are hereby set aside.

41. The writ petitions are allowed in the above terms with no order as to costs.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

19th August, 2020
jk

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No