

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 777 OF 2018**

Raju Gawas

... Petitioner

Versus

State of Goa, Thr. the Chief Secretary
and 22 Others

... Respondents

Shri Nitin Sardesai, Senior Advocate with Shri L. Raghunandan,
Advocate for the Petitioner.Shri Prashil Arolkar, Additional Government Advocate for Respondent
Nos. 1 and 2.

Shri Ryan Menezes, Advocate for Respondent No. 12.

Shri Terrence Sequeira, Advocate for Respondent No. 16.

**Coram:- DAMA SESHADRI NAIDU, J. &
M.S. JAWALKAR, JJ.****Date:- 4th MARCH 2021****ORAL ORDER:****Introduction:**

A person in the feeder category lacked the experience to be promoted. But he was promoted *ad hoc*. That ad hoc promotion is at the expense of that person's seniors in the feeder category. Later, the petitioner and his seniors, too, were given regular promotions. In the promotional cadre, the employer preserved the feeder category seniority. It disregarded the petitioner's service as an *ad hoc* promotee. The petitioner questions it.

Facts:

2. Petitioner Raju Gawas was appointed in November 1996 as a Technical Officer. It was on the recommendation of the Goa Public Service Commission (GPSC). In October 2002, he had his services

confirmed. Then, in September 2006, he was promoted as a Junior Scale Officer. When he was holding that position, on 04.12.2012 Raju was promoted as a Senior Scale Officer, but it was on an *ad hoc* basis. This *ad hoc* promotion suffers from two flaws:

- (i) By then, Raju did not complete six years in the feeder category to be promoted as Senior Scale Officer;
- (ii) In the feeder category, there were other officers senior to Raju.

3. The record reveals that Raju continued to hold the post of Senior Scale Officer on *ad hoc* basis for a few more years, with periodic extensions. Meanwhile, on 01.04.2013, Raju completed six years of service in the feeder category and earned his eligibility to be promoted as Senior Scale Officer—on a regular basis. Eventually, that regular promotion occurred on 09.12.2016.

4. Certain other persons, including respondent no. 16, were also promoted from the revised seniority list to the post of Senior Scale Officer. On regular promotion, Raju was shown junior to three others. True, they only had regular promotion without any *ad hoc* promotion earlier. But the fact remains that those three persons were seniors to Raju in the feeder category, that is as Junior Scale Officers. Under these circumstances, Raju filed this Writ Petition after his failed attempt before his employer to have his *ad hoc* tenure counted for seniority. Though, initially, he has sought reliefs on various counts; in the end, Raju has confined himself only to these reliefs:

- c) In the alternative, direct the Respondent to regularize the service with retrospective effect ... from year 2013 in the Senior Scale and consequently determine the seniority of the petitioner in the Goa Civil Service to the cadre of Senior Scale;
- cc) Issue a writ of certiorari or writ ... quashing and setting aside the impugned seniority list dated 24.10.2017 and re-determine

seniority of the petitioner in the Goa Civil Service to the cadre of Senior Scale.

Arguments:

Petitioner:

5. In the above factual background, Shri Nitin Sardessai, the learned Senior Counsel for the petitioner, has raised two issues:

(i) That Raju's appointment on an *ad hoc* basis must have been treated as regular service. That is, his regular promotion ought to have been retrospective from the date he had been initially promoted on *ad hoc* basis;

(ii) That Raju's seniority must have been reckoned from the date he had been promoted on the *ad hoc* basis. That is, those who were seniors to Raju in the feeder category could not steal march over him in the promotional category because when Raju was promoted, albeit *ad hoc*, the other so-called seniors had not been borne in the cadre.

6. Shri Sardessai has pointed out that at least by 01.04.2013, Raju acquired the requisite six-year experience in the feeder category. He had all the necessary qualifications, too. By 01.04.2013, there existed a clear vacancy. And even the *ad hoc* promotion was based on the GPSC's recommendation.

7. Initially, Raju was appointed, as the learned Senior Counsel has fairly submitted, *ad hoc* though seniors to him had been available in the feeder category. For that, the Government might have had its reasons. The Government having done so, its action has given rise to legitimate expectation on Raju's part, besides creating vested rights in his favour. Now, the Government's resiling from its earlier stand affects Raju prejudicially.

8. In this context, Shri Sardesai has drawn our attention to clause (i) and (iv) of the Office Memorandum issued in June 1992. Then, the learned Senior Counsel has referred to what is said to be a revised Office Memorandum issued in April 2009. To elaborate, the learned Senior Counsel has submitted that in the first office memorandum, the Government deprecated the departmental practice of promoting personnel *ad hoc* when clear vacancies had existed. It recommended that promotions must be effected to the existing vacancies based on the eligibility, the GPSC's recommendations, and seniority.

9. Shri Sardesai, then, has referred to the revised Office Memorandum. In that one, he points out, the Government has not insisted on the seniority. Therefore, the authorities initially promoting Raju *ad hoc* without reference to the seniority accords with the revised Office Memorandum. He has also stressed that in the absence of any Rule, even the Office Memorandum must be adhered to. To support his contentions, Shri Sardesai has relied on *S.N. Dhingra & Others Vs. Union of India & Others*¹ and *Secretary, Minor Irrigation Department and RD's Vs. Narendra Kumar Tripathi*².

10. Shri Sardesai has taken us through the writ pleadings with specific reference to para 22. Then he contends that in the respondent's reply, especially in para 23, the Government has not specifically addressed why it wanted to upset the whole scheme of promotion and relegate Raju in seniority. In this context, the learned Senior Counsel has relied on a Division Bench judgment of this Court in *Maya M. Pednekar v. State of Goa* (Writ Petition No. 847 of 2015 decided on 02.02.2017). According to the learned Senior Counsel, even if a person has been promoted by mistake, his seniority should not be affected,

¹ (2001) 3 SCC 125

² (2015) 11 SCC 80

especially by those who came on record later. As to the *ad hoc* promotion, the learned Senior Counsel has finally contended that as the vacancies existed and as Raju had been qualified by then, the convenience of calling Raju's promotion *ad hoc* does not make it so. In other words, the nomenclature cannot be a determining factor. So the learned Senior Counsel points out that Raju's initial promotion in 2013 must be treated as a regular promotion.

Respondents:

11. Shri Prashil Arolkar, the learned Additional Government Advocate for respondents 1 and 2, with equal persistence, has first raised an objection: The Writ Petition suffers from the vice of laches. According to him, the *ad hoc* promotion was given in December 2012 and the Writ Petition was filed in 2018.

12. Shri Arolkar has also pointed out that not only the recruitment but also the promotion must be guided by the Rules. He has also taken us through Rule 6 of the Goa Government (Seniority) Rules, 1967. To support his contention, Shri Arolkar has relied on *K. Madhavan v. Union of India*³; *Union of India v. K.K. Vadera*⁴; *State of Uttaranchal v. Dinesh Kumar Sharma*⁵, *Nirmal Chandra Sinha v. Union of India*⁶, and *Union of India v. KL Taneja*⁷.

13. Shri Arolkar has drawn our attention to para 24(a) of the Writ Petition. He points out that the other three, who were seniors to the petitioner but who could not be promoted along with the petitioner, should suffer no prejudice. According to him, as their Annual Confidential Reports were not readily available, they were not considered for *ad hoc* promotion. They suffered no other disqualification

³ (1987) 4 SCC 566

⁴ 1989 Supp (2) SCC 625

⁵ (2007) 1 SCC 683

⁶ (2008) 14 SCC 29

⁷ 2013 SCC Online Del 1428

whatsoever, so the departmental delay in promoting its employees should affect none. All employees should be placed in service hierarchy as per their seniority.

Respondent No.16:

14. Respondent No. 16, who had not been promoted *ad hoc* but who remained senior in the feeder category, has joined the issue. Shri Sequeira, the learned Counsel for the 16th respondent, has submitted that the *ad hoc* promotion was recommended by the DPC comprising the local authorities. As per the Service Regulations, it is not this DPC that recommends regular promotions. Besides that, he also points out that GPSC's consultation and recommendations count for regular promotions but not *ad hoc*. In this context, Shri Sequeira has stressed that neither the existence of vacancies nor *ad hoc* promotions ought not to affect the seniority of those who have been regularly promoted. To support his contentions, he has relied on *State of Orissa v. Pyari Mohan Misra*⁸ and *Vinod Giri Goswami v. State of Uttarakhand*⁹.

Reply:

15. In reply Shri Sardesai, the learned Senior Counsel, has submitted that the Writ Petition suffers neither from any delay nor laches. According to him, once the respondent authorities had upset the petitioner's seniority, he represented to them. And that representation was finally rejected in the first week of December 2017. Soon thereafter, at the very beginning of 2018, the petitioner filed this Writ Petition.

16. Then, the learned Senior Counsel distinguished between the approval and recommendation as to the promotions the State secured from GPSC. He points out that even for *ad hoc* promotions, the Government had GPSC's approval; it was not a mere recommendation.

⁸ AIR 1995 SC 974

⁹ AIR 2020 SC 5099

Finally, he has reminded us that in the second office memorandum, seniority as a promotional criterion has been done away with. Therefore, Raju's appointment in 2013 must be treated as a regular one and that his seniority must be protected from the date he was borne on service as Senior Scale Officer.

17. Heard Shri Nitin Sardesai, the learned Senior Counsel for the petitioner; Shri Prashil Arolkar, the learned Additional Government Advocate for respondent nos. 1 and 2; Shri Ryan Menezes, the learned Counsel for respondent no. 12; and Shri Terrence Sequeira, the learned Counsel for respondent no. 16.

Discussion:

18. Indeed, the petitioner wants this Court to hold that his promotion in 2013 was regular, rather than *ad hoc*. He further wants this Court to declare that his seniority includes his *ad hoc* service. Thus, the issue to be resolved is narrow, and the facts are not disputed, either.

19. When the petitioner was promoted *ad hoc*, he did not have enough experience in the feeder category—that is, six years as a Junior Scale Officer. But soon after his *ad hoc* promotion, he completed that period by 01.04.2013. By that date, no doubt, Raju was qualified and there existed a clear vacancy. Of course, there is a controversy whether the Government merely consulted GPSC or secured its approval. As already noted, Raju was promoted *ad hoc*; this *ad hoc*ism continued even after his completing six years in the feeder category. That is, his *ad hoc* promotion was simply extended. Finally, DPC was constituted.

20. It is the respondents' contention that the DPC that recommended the petitioner for the *ad hoc* promotion was not the DPC that should be considering regular promotions. In other words, it is only a 'departmental DPC' that considered exigent promotions *ad hoc*—to meet the daily administrative needs. The actual DPC in terms of the

Recruitment Regulation happened only in 2016, when the petitioner and a few others, too, were regularly promoted as Senior Scale Officer.

21. Here we may, with profit, refer to the petitioner's initial *ad hoc* promotion order. Para 3 of the order, dated 04.12.2012, reads thus:

"The above ad hoc appointment will not bestow on the promoted Officers any claim for regular appointment and the service rendered on ad hoc basis in the grade *will not count for the purpose of seniority in that grade or for eligibility for promotion to the next higher grade.*"

(italics supplied)

22. Neither any statute nor any regulation prohibits promotions *ad hoc*, especially, when such promotions are in the interest of better administration. That said, those who secure such out of turn promotion must also abide by conditions in that order of promotion. At any rate, from 2012 to this date, the petitioner has not chosen to challenge the conditions imposed in the order, dated 04.12.2012.

23. Now, we will refer to the office memoranda: one dated, dated 25.06.1992 and the other, dated 16.03.2016. Before going into detail of these memoranda, let us not lose sight that an office memorandum, for example, deploring undesirable departmental practices and insisting on proper administrative measures cannot be treated as a rule within Article 309 of the Constitution.

24. An administrative order or instruction, variously labelled, may confer certain rights or benefits. If it does so, it will be treated as binding and enforceable. In *Union of India v. K. P. Joseph*¹⁰, the Supreme Court has accepted the proposition that an administrative order confers no justiciable right. But this rule, like all other general rules, is subject to exceptions. According to *K. P. Joseph*, to say that an administrative order could confer no rights would be too wide a proposition. Indeed,

¹⁰AIR 1973 SC 303

there are administrative orders which confer rights and impose duties. It is because an administrative order can abridge or take away rights.

25. On occasions, the courts have allowed the employees to invoke the equitable principle of promissory estoppel to enforce even administrative orders or instructions. That said, I may add that the enforceability depends on the nature of rights conferred or the obligations imposed. And it entirely depends on facts and circumstances of each case. Now, we will examine the office memoranda in the light of this proposition.

26. The first Memorandum, dated 25.06.1992, has deprecated the departmental practice of *ad hoc* promotions even when clear vacancies existed. It has also advised that whenever the period for *ad hoc* appointment is likely to exceed six months, the Department concerned must consult GPSC at least one month before the period expires and secure its approval for extension beyond six months. Indeed, the petitioner has laid much emphasis on this office memorandum, a party of which reads:

[I]n the interest of better personnel administration and also in the interest of smooth and efficient discharge of functions of the Department, it is hereby directed that:

i) No ad-hoc appointment should be made where there is a clear vacancy, recruitment rules have been notified and seniority of the feeder posts (where the posts is to be filled by promotion) has been finalized.

Non-availability of A.C.Rs for any particular year or years is no justification to make ad-hoc appointments.

ii) Where the recruitment rules have not been notified or the seniority has not been finalized in the case of appointment by promotion, ad-hoc appointment may be resorted to. In such cases, however, the duration of ad-hoc appointment should not exceed 6 months.

iii) Where appointment to a post has been stayed by the Court (in a writ petition or otherwise) efforts should be made, to get the stay vacated as early as possible or at least seek the permission of the Court to make officiating appointments subject to the outcome

of the case, failing which appointment may be made on ad-hoc basis.

iv) Where the period of ad-hoc appointments is likely to exceed 6 months specific reference may be made to Goa Public Service Commission at least one month in advance of such expiry, seeking approval of G.P.S.C. for extension of the ad-hoc appointment beyond six months.

The above instructions should be followed strictly and any deviation thereof will be viewed seriously.

(italics supplied)

27. Later in 2009, the State Government has noted with disquiet that despite its earlier instructions, certain Departments had been persisting with this nefarious practice of *ad hoc* appointments. Then, it has reminded the Departments concerned about the inadvisability of such practice and urged them to go for regular recruitments. The second, altered Office Memorandum, dated 16.03.2016, reads:

Attention of all Head of Departments is invited to this Department's Office. Memorandum No.2/38/75-PER(Vol.IV) dated 15/12/2003, 20/08/2004 and 17/03/2005 wherein instructions have been issued regarding ad-hoc appointments/promotions.

It is made crystal clear vide O.M.No.2/38/75-PER (Vol.II) Part dated 25/06/1992 that no ad-hoc appointment/promotion should be made where there is a clear vacancy and Recruitment Rules are notified. In spite of this Departments still resort to ad-hoc promotion/appointment in violation of instructions contained in above O.M. as a result of which the Government has taken serious view of such actions on the part of the Departments.

The Goa Public Service Commission has now observed that in spite of the clear instructions of the Government, most of Departments are promoting officers on ad-hoc basis and the same is being extended for indefinite period without making any efforts to fill up such posts on regular basis.

Although such ad-hoc appointment do not entitle the incumbents for a regular appointment, continuous officiating in the post evidently

creates a sort of claim over the post held by the employee thereby may make it difficult to terminate such appointments.

All Heads of Departments/offices are therefore *requested to initiate immediate action to regularize ad-hoc appointments/promotion where clear vacancies are available.* It is further reiterated that not to make any ad-hoc appointment/promotion, where there is a clear vacancy and recruitment Rules are notified.

(italics supplied)

28. To begin with, I have italicized certain portions of the Memorandum to throw light on the nature of the Memorandum. It is no executive fiat either under Article 309 or under Article 162 of the Constitution. It is an advisory, adjuring the authorities concerned to adopt better administrative practices. It draws the “attention of all Head of Departments”; it accepts that “such ad-hoc appointments do not entitle the incumbents for a regular appointment” but acknowledges the practical difficulties the Department faces in resolving issues engendered by such appointments; and, in the end, it “requests” all Heads of Departments/offices to initiate immediate action to regularize ad-hoc appointments/promotion where clear vacancies are available.

29. Though the learned Senior Counsel has submitted that in the office memorandum of 2009 there was no reference to seniority, we are afraid that contention is specious. The second memorandum only reminds the authorities concerned of the imperative to follow the Recruitment Rules and to go for the regular recruitment or promotions when vacancies exist. The office memorandum cannot be read as if it were a statute, not even as a statutory rule. Even if we accepted Raju’s, the second office memorandum insisted that any appointment or promotion must be to a clear vacancy and as per Recruitment Rules. Appointment by promotion being a facet of recruitment, it requires seniority as one of the criteria. Nor can we ignore Raju’s disqualification on account of insufficient seniority.

30. It is incorrect for Raju to insist that the office memorandum of 2009 has dispensed with seniority. First it is incorrect and second it is implausible because no administrative instructions can do away with any requirements under Recruitment Rules or Regulations. That apart, the departmental justification for promoting Raju, *ad hoc* though, is that the ACRs of those seniors to the petitioner, then, were unavailable.

31. As rightly contended by respondents' counsel, all along the petitioner's initial appointment had been *ad hoc*. Even the office memorandum of 1992 only insisted on clause (iv): that before the period of *ad hoc* appointment expires, the Department concerned must consult the GPSC and get its approval for extension if it is beyond six months.

The Decisions:

32. Let us consider the precedential position. In *S.N. Dhingra*, the respondents were working in State Judicial Service as Chief Metropolitan Magistrates. The Administrator upgraded the posts of CMM and included them in Delhi Higher Judicial Service ("HJS"). Later, the appointing authority promoted the respondents based on the upgradation and after consulting the High Court. Those respondents did possess the requisite qualification and 'experience' for being appointed to HJS. The appellants, who were direct recruits, challenged the respondents' inclusion in the gradation list. They contended that the upgraded CMMs were juniors to them. According to them, the respondents' appointment "was fortuitous and stopgap arrangement and said period of service cannot be reckoned as continuous service for their seniority in State Higher Judicial Services and High Court".

33. *S.N. Dhingra* followed *Rudra Kumar Sain v. UOI*¹¹, its own Constitution Bench decision, as well as its another decision in *O. P. Singla v. UOI*¹², and held that whether a particular appointment is really

¹¹AIR 2000 SC 2808

¹²AIR 1984 SC 1595

fortuitous or stop-gap must be “decided in the facts and circumstances of the case and any universal principle cannot be made for the purpose”. On facts, it has further held that the Administrator followed the due procedure—upgraded the posts, consulted the High Court, and promoted only qualified candidates. According to *S.N. Dhingra*, “it would be a travesty of justice if their continuous appointment in the service is not taken into account for the purpose of their seniority, merely because of the use of the expression 'stop-gap and fortuitous' in the order” of appointment.

34. The Supreme Court, in *S.N. Dhingra*, has ruled against a universal approach to temporary or *ad hoc* appointments. According to it, the nature of such appointments must be “decided in the facts and circumstances of the case”. Besides, the respondents in that case were qualified and the recruitment or promotion was strictly in statutory terms. Here, neither aspect holds good. Raju lacked experience, and the promotion was in disregard of many other employees who are seniors to him. And that disregard was for no valid reason.

35. In *Narendra Kumar Tripathi*, the question was whether the petitioner could count *ad hoc* service for his seniority. A two-Judge Bench of the Supreme Court has considered the “scheme of the working of the Rules in the Department”. The Department, as *Narendra Kumar Tripathi* notes, has been making direct recruitment after due selection and by applying the Rules. These rules have been extended occasionally to subsequent recruitments and services were regularized. Besides, before the Court, the “validity of scheme of these recruitments was not under challenge”. It has eventually held that “when rules provide that such *ad hoc* appointments had to be regularized and seniority counted from date of appointment, Respondent could not

be deprived of past service rendered by him from date of appointment on *ad hoc* basis till date of regularization”.

36. Pertinently, *Narendra Kumar Tripathi* notes that the respondents’ service was neither “fortuitous [n]or against rules”. Nor is it “by way of stop gap arrangement”. So, *Narendra Kumar Tripathi* has held that the respondent was entitled to count service from date of his appointment on *ad hoc* basis.

37. As I note, in *Narendra Kumar Tripathi*, the expression “ad hoc” was a smokescreen. There was nothing beyond that very expression to call the respondent’s appointment any stopgap or fortuitous arrangement: to serve any administrative exigency.

38. Let us now consider the decisions the respondents have cited. In *K. Madhavan*, there arose a dispute about seniority in Delhi Police Service. The appellant was recruited directly as DSP in Delhi, whereas respondent No. 5 was recruited initially at Rajasthan. He was then transferred to Delhi. In the seniority list, the petitioner was placed below respondent No. 5. In a challenge against the seniority list, the appellant contended that deemed or notional date of appointment of respondent no. 5 with retrospective effect was done *mala fide* to make the appellant junior to him. On facts, the Supreme Court quashed the seniority list and required the Department to redetermine the seniority.

39. In fact, the Supreme Court has accepted the appellant’s contention that the respondent No. 5 was not even eligible for appointment to the post of SP, CBI. He was a deputationist. Under the 1963 Rules, he had to complete eight years’ service in the grade. Though the case before me has no factual parity, it has one element common: the contender’s insufficient experience.

40. In *K. K. Vadera*, the question was whether promotions should be with effect from the date the promotional posts were created.

The Supreme Court has held that it has known no law or rule under which a promotion is to be effective from the date the promotional post was created. After a post falls vacant, for any reason whatsoever a promotion to that post should be from the date the promotion is granted and not from the date when such post falls vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion.

41. In *Dinesh Kumar Sharma*, the Supreme Court echoes *K. K. Vadera* and holds that an employee cannot claim promotion from date of vacancy but can only get promotion and seniority from the day he has been substantially appointed.

42. In *Nirmal Chandra Sinha*, the appellant was promoted as General Manager on a particular date. But he claimed that he should be treated as promoted when the vacancy arose. The Supreme Court has repelled that contention; it has held that the date of occurrence of vacancy is not relevant for promotional purposes. And that is settled law.

43. In *K L Taneja*, the Delhi High Court has considered a “cornucopia of case law” and culled out these propositions:

(i) Service Jurisprudence does not recognize retrospective promotion i.e. a promotion from a back date.

(ii) If there exists a rule authorizing the executive to accord promotion from a retrospective date, a decision to grant promotion from a retrospective date would be valid because of a power existing to do so.

(iii) Since *mala fides* taint any exercise of power or an act done, requiring the person wronged to be placed in the position the person would find himself but for the mala fide and tainted exercise of power or the act, promotion from a retrospective date can be granted if delay in promotion is found attributable to a mala fide act i.e. deliberately delaying holding DPC, depriving eligible candidates the right to be promoted causing prejudice.

(iv) If due to administrative reasons, DPC cannot be held in a year and there is no taint of malice, no retrospective promotion can be made.

44. *K. L. Taneja* has, in the end, held that according to the normal rule of law, nobody can be promoted with a retrospective effect. The exception applies when there exists a rule or an exceptional fact which necessitates it. And those exceptional facts must be specifically pleaded.

What should govern this case?

45. It is desirable for any employer to go for regular recruitment or promotions. Once a clear vacancy exists and the need to fill the vacancy remains, it is in the realm of the employer's discretion. And it is not for the Court to insist how the employer should conduct its affairs of administration. All that this Court can observe is whenever the employer recruits or promotes an employ, it should follow the Rules and Regulations to a perfection. When those Rules or Regulations stand violated, the Court judicially reviews the employer's action. But there can be no administration by adjudication.

46. Once we have accepted that the petitioner's initial promotion, if we could call it so, was *ad hoc*, the law is well settled that it cannot be treated as part of his substantial service. Nor can there be

any proposition of law that once a vacancy existed, the appointment or promotion must relate back to the date of vacancy.

47. Now, we will address the core issue: the seniority. Undoubtedly, Raju was junior to at least three persons in the feeder category as Junior Scale Officer. For the reasons unclear, the Department decided to favour Raju. And it did. It promoted him in preference to other seniors, though *ad hoc*. And that *ad hoc* promotion continued for a couple of years. Finally, the respondent went for regular promotions. It constituted the DPC in accordance with the Recruitment Regulations and acted on its recommendations. Of course, it sent the recommendations to GPSC and secured its recommendation, too.

48. Then, along with Raju, other eligible employees—a few of them incidentally senior to Raju—were also promoted. In fact, initially, as the respondents contend, the seniors were not promoted *ad hoc* earlier as their ACRs were unavailable. In the promotional post, those employees' seniority was preserved. Rightly so.

49. Here the petitioner's particular argument is that the respondent no. 16 and two others had not been borne on record by the time the petitioner was promoted. In fact, if we do not reckon equate the *ad hoc* promotion with the regular one, that argument evaporates.

For the above reasons, we dismiss the Writ Petition. No order as to costs.

M.S. JAWALKAR, J.

DAMA SESHADRI NAIDU, J.

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