

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OA) No.887 of 2019

An application under Section 19 of the State Administrative Tribunal's Act, 1985.

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Prasanta Kumar Hanuman

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s. B.Routray, G.Mishra,
G.Mukherjee & J.Pattanaik.

For Opp. Parties : M/s. R.N.Mishra, AGA
(O.P.No.1 to4) Mr. J.Pattnaik,
Sr. Counsel, (O.P. No.5),
Mr. S.B.Jena & Associates,
(O.P.Nos.6 & 7), Mr.
G.Mukherjee, Sr. Counsel
(O.P. No.8 to11)

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:21.11.2022 and Date of Judgment:22.12.2022

Biraja Prasanna Satapathy, J.

1. The present Writ Petition has been filed by the Petitioner with a prayer to declare the impugned gradation list dated 20.02.2019 as at Annexure-10 reflecting the *inter-se* position of the petitioner and private opposite party No.5 to be illegal and in violation of settled position of law. It has also been prayed to direct the Opposite Parties to restore

the seniority of the Petitioner vis-à-vis Opposite Party No.5 as per the gradation list published in the year 2013, 2016 and 2017.

2. The case of the Petitioner shorn off unnecessary details is that pursuant to the recruitment taken up by the opposite parties to fill up the post of Foresters in different Forest Divisions of the State, the Petitioner made his application in respect of the vacancy available in Kendu Leaf Division. The Petitioner while made his application in respect of the vacancies available in Kendu Leaf Division, the private opposite party no.5 made his application in respect of the vacancies available in Wildlife Division. After completion of the selection process undertaken by different divisions, Opposite Party No.2 vide his letter dated 28.09.2010 under Annexure-2 requested the concerned Divisional Forest Officers to direct the candidates, who have been selected in the first phase of training to join the training institution one day before the schedule date of such commencement i.e. 18.10.2010. Since the Foresters recruited in different Kendu Leaf Division of the State could not be included in the list of 149 Foresters, who were selected to undergo the Foresters training as reflected under Annexure-2 dated 28.09.2010, Opposite Party No.3

vide letter dated 03.11.2010 addressed to the Opposite Party No.1 made a request to consider the grievance of such Foresters selected for their appointment in the different K.L. Division without undergoing the training in question. The said letter under Annexure-3 dated 03.11.2010 was issued in furtherance of the earlier letter issued by the said Opposite Party No.3 on 04.10.2010, wherein a request was earlier made to the Government to relax the relevant recruitment Rule so that the Foresters recruited in Kendu Leaf Divisions may be posted as Foresters without undergoing the training because of acute shortage of Foresters in Kendu Leaf Division of the State. On receipt of the proposal submitted by the Opposite Party No.3 under Annexure-3 and the earlier proposal submitted on 04.10.2010, Government-Opposite Party No.1 vide Office Order dated 11.11.2010 under Annexure-4 resolved to relax the provision of Rule-22 of the Odisha Subordinate Forest Service (Method of Recruitment and Conditions of Service of Foresters) Rules, 1998 (hereinafter referred as Rules). While relaxing Rule-22 of the Rules, it was resolved to allow the newly recruited Foresters of Kendu Leaf Wings to join in their services without undergoing the prescribed prior

training in the public interest with the following stipulations:-

- (i) *That the P.C.C.F. (K.L) should ensure to impart a capsule training for their Foresters which would enable them to discharge their duties.*
- (ii) *That by allowing them to join in service without undergoing the prescribed prior training would not affect their seniority vis-à-vis the Foresters of other wings undergoing training earlier to them.*
- (iii) *That the concerned Foresters should be sent to undergo the prescribed training at a subsequent stage after ensuing K.L. operation season.*
- (iv) *That these foresters should be paid the amount of stipend for one year so that there would not be any disparity between these Foresters of K.L wing joining the service and those of other wings joining in training and that after one year they may be paid the regular salary when they would be sent for training”.*

2.1. Basing on the relaxation issued under Annexure-4, the Petitioner herein was temporarily appointed as a Forester vide Order dated 16.11.2010 under Annexure-5 and he joined as such on 19.11.2010 in Kuchinda K.L. Division. But prior to such joining of the Petitioner in terms of the order dated 16.11.2010 under Annexure-5, the Opposite Party No.5 who was selected and included in the first phase of training joined the training institute as per the letter dated 11.10.2010 on 18.10.2010. Subsequently, on completion of the required Forester Training, Opposite Party No.5 was allowed to join in his service on 18.10.2011. Taking into account the joining of the Petitioner as a

Forester on 19.11.2010 basing on Annexure-5 and the joining of the Opposite Party No.5 after completion of his training on 18.10.2011, in the gradation –cum-seniority list of Foresters published in the year- 2013 under Annexure-6, while the Petitioner was placed at Sl.No.1020, Opposite Party No.5 was placed at Sl.No.1169 with the date of joining of the Petitioner and Opposite Party No.5 as 18.10.2011 and 19.11.2010. Similarly, in the gradation list published in the year 2016 under Annexure-6-Series, while the Petitioner was placed at Sl. No.528, Opposite Party No.5 was placed at S.L.No.687. Not only that in the gradation list published in the year 2017 under Annexure-6-Series, while the Petitioner was placed at Sl.No.520 and private Opposite Party No.5 was placed at S.L. No.673.

2.2. While the matter stood thus, a letter was issued by the Opposite Party No.1 on 13.04.2017, wherein it was decided to fix the seniority of Foresters recruited under the Rehabilitation Assistance Scheme from the date of their joining in training or in the Division. Subsequently, in the tentative gradation list of Forester prepared on 10.01.2019 under Annexure-8 for the first time, the position of the petitioner vis-à-vis opposite party No.5 was changed by

placing the petitioner at Sl. No.469 and the Opposite Party No.5 at Sl. No.388. Challenging his placement in the tentative gradation list, the Petitioner though filed his objection, but without considering same in its proper perspective, when the prayer of the petitioner to place him above the opposite party no.5 was rejected with publication of the impugned gradation list under Annexure-10, the present Writ Petition was filed with the aforesaid prayer.

3. Mr. Budhadev Routray, learned Senior Counsel appearing for the Petitioner vehemently contended that even though the Petitioner and the Opposite Party No.5 were all selected as Foresters basing on the recruitment process initiated in the year 2010 and all were selected for their appointment as Foresters in different divisions, but the Petitioner who had opted for his appointment in Kendu Leaf Division was allowed to join in Kuchinda K.L. Division vide order dated 16.11.2010 under Annexure-5. Pursuant to the said order, the Petitioner joined as a Forester in Kuchinda K.L. Division on 19.11.2010 and the said date of joining of the petitioner was reflected in the service book of the Petitioner. On the other hand, private Opposite Party

No.5 though was selected in respect of Rairangapur Wildlife Division, but on his joining in the said division basing on the letter issued by the Opposite Party No.1 on 11.10.2010, he was deputed to undergo the training where he joined on 18.10.2010. After completing the training, he joined in his service on 18.10.2011. Therefore, taking into account the joining of the Petitioner on 19.11.2010 and that of the opposite party no.5 on 18.10.2011, in the gradation list of Foresters published in the year 2013, 2016 and 2017, the Petitioner all through was placed above the private opposite party no.5 with the date of joining in the rank of Forester as 19.11.2010 and 18.10.2011 respectively.

3.1. It is also contended that even though the Petitioner and the private opposite party No.5 were selected for their appointment as Forester in different divisions, but because of the request made by the Opposite Party No.3 under Annexure-3 and his earlier request made on 04.10.2010, Government-Opposite Party No.1 while relaxing the provision contained under Rule-22 of the Rules, allowed the Foresters selected in different K.L.Division to join in their service without undergoing the prescribed training in public interest. Since in the officer order issued on 11.11.2010 under Annexure-4, it was clearly stipulated that by allowing

the Petitioner and similarly situated Foresters to join in their services without undergoing the prescribed period of training, it will not affect their seniority vis-à-vis the Foresters of other wings undergoing training earlier to them, the petitioner in the tentative/final gradation list published in the year 2013, 2016 and 2017 was placed all through above the private opposite party No.5.

3.2. It is also contended that since the placement of the Petitioner vis-à-vis, Opposite Party No.5 in the gradation list published in the year 2013, 2016 and 2017 was never challenged by the private opposite party no.5, the same should not have been changed suo-motu by the Opposite Party No.2 while publishing the tentative gradation list of Foresters on 10.01.2019 under Annexure-8. In the said tentative gradation list of Foresters, the Petitioner for the first time was placed below the opposite party No.5 and the date of joining of opposite party No.5 in the said gradation list was shown as 18.10.2010 and that of the petitioner as 19.11.2010. Since at no point of time, the opposite party no.5 ever challenged the placement of the petitioner above him in the gradation list of Forester published in the year 2013, 2016 and 2017, the Opposite Party No.2 should not have changed the said position on his own and that too

without following the stipulation contained in the order issued by the Government under Annexure-4. The Petitioner though filed his objection to such placement in the tentative gradation list vide Annexure-9, but Opposite Party No.2 rejected the same by publishing the impugned gradation list on 10.02.2019 under Annexure-10. BY such of action of Opposite Party No.2, the placement of the Petitioner over the Opposite Party No.5 in the rank of Forester was unsettled.

3.3. Mr. B.Routray, learned Senior counsel appearing for the Petitioner in support of his aforesaid submissions relied on the decisions of the Hon'ble Apex Court as well as of this Court reported in the case of;

1. *Shiba Shankar Mohapatra & Others v. State of Orissa & Others (2010) 12 SCC 471.*

2. *K.R.Mudgal & Others v. R.P.Singh & Others (1986) 4 SCC 531.*

3. *Rourkela Technical Educational Society & Others v. Collector-cum-District Magistrate & Others (W.P.(C) No.13620 of 2009 decided on 17.05.2011).*

3.4. Hon'ble Apex Court in the case of ***Shiba Shankar Mohapatra & Others (supra)***, in Paragraph-19 and 29 has held as follows:-

"19. The issue of challenging the seniority list, which continued to be in existence for a long time, was again considered by this Court in **K.R. Mudgal & Ors. v. R.P. Singh & Ors.** AIR 1986 SC 2086. The Court held as under:-

"A government servant who is appointed to any post ordinarily should at least **after a period of 3-4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity.....** Satisfactory service conditions postulate that there shall be no sense of uncertainty amongst the Government servants created by writ petitions filed after several years as in this case. **It is essential that anyone who feels aggrieved by the seniority assigned to him, should approach the Court as early as possible** otherwise in addition to creation of sense of insecurity in the mind of Government servants, there shall also be administrative complication and difficulties.... In these circumstances we consider that the High Court was wrong in rejecting the preliminary objection raised on behalf of the respondents to the writ petition on the ground of laches." (Emphasis added).

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29. Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In *K.R. Mudgal (supra)*, this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation".

3.5. Similarly, Hon'ble Apex Court in the case of

K.R.Mudgal & Others (supra), in Paragraphs- 7 & 9

has held as follows:-

“7. The respondents in the writ petition raised a preliminary objection to the writ petition stating that the writ petition was liable to be dismissed on the ground of laches. Although the learned Single Judge and the Division Bench have not disposed of the above writ petition on the ground of delay, we feel that in the circumstances of this case the writ petition should have been rejected on the ground of delay alone. The first draft seniority list of the Assistants was issued in the year 1958 and it was duly circulated amongst all the concerned officials. In that list the writ petitioners had been shown below the respondents. No objections were received from the petitioners against the seniority list. Subsequently, the seniority lists were again issued in 1961 and 1965 but again no objections were raised by the writ petitioners, to the seniority list of 1961, but only the petitioner No. 6 in the writ petition represented against the seniority list of 1965. We have already mentioned that the 1968 seniority list in which the writ petitioners had been shown above the respondents had been issued on a misunderstanding of the Office Memorandum of 1959 on the assumption that the 1949 Office Memorandum was not applicable to them. The June 1975 seniority list was prepared having regard to the decision in Ravi Varma's case (supra) and the decision of the High Court of Andhra Pradesh in the writ petitions filed by respondent Nos. 7 and 36 and thus the mistake that had crept into the 1968 list was rectified. Thus the list was finalised in January, 1976. The petitioners who filed the writ petition should have in the ordinary course questioned the principle on the basis of which the seniority lists were being issued from time to time from the year 1958 and the promotions which were being made on the basis of the said lists within a reasonable time. For the first time they filed the writ petition in the High Court in the year 1976 nearly 18 years after the first draft seniority list was published in the year 1958. Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the Government servants created by the writ petitions filed after several years as in this case. It is essential that anyone who feels aggrieved by the seniority assigned to him should approach the court as early as possible as otherwise in addition to the creation of a

sense of insecurity in the minds of the Government servants there would also be administrative complications and difficulties. Unfortunately in this case even after nearly 32 years the dispute regarding the appointment of some of the respondents to the writ petition is still lingering in this Court. In these circumstances we consider that the High Court was wrong in rejecting the preliminary objection raised on behalf of the respondents to the writ petition on the ground of laches. The facts of this case are more or less similar to the facts in *R.S. Makashi & Ors. v. I.M. Menon & Ors.*, [1982] 2 S.C.R. 69. In the said decision this Court observed at page 100 thus: "In these circumstances, we consider that the High Court was wrong in over-ruling the preliminary objection raised by the respondents before it, that the writ petition should be dismissed on the preliminary ground of delay and laches, inasmuch as it seeks to disrupt the vested rights regarding the seniority, rank and promotions which had accrued to a large number of respondents during the period of eight years that had intervened between the passing of the impugned Resolution and the institution of the writ petition. We would accordingly hold that the challenge raised by the petitioners against the seniority principles laid down in the Government Resolution of March 22, ought to have been rejected by the High Court on the ground of delay and laches and the writ petition in so far as it related to the prayer for quashing the said Government Resolution should have been dismissed."

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9. We may also refer here to the weighty observations made by a Constitution Bench of this Court in *Maloon Lawrence Cecil D'Souza v. Union of India & Ors.*, [1975] Supp. S.C.R. 409 which are as follows:

"Although security of service cannot be used as a shield against administrative action for lapse of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult to doubt to guarantee such security in all its varied aspects. It should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result

in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time."

3.6. This Court in the case of **Rourkela Technical Educational Society & Others** (*supra*), in

Paragraph- 24 has held as follows:-

"24. It is not in dispute that the Petitioner in the present writ petition challenges the jurisdiction of Addl. District Magistrate-cum-Addl. Registrar of Societies, Sundargarh (O.P. No.2) in passing the impugned orders under Annexures-18 and 19. Law is well settled that when any order is without jurisdiction, the party affected by such order can challenge the same invoking extra-ordinary jurisdiction of writ Court. The principles of estoppels, waiver and acquiescence or even res judicata which are procedural in nature would have No. application since order passed without jurisdiction is a nullity. The Apex Court in the case of Hasham Abbas Sayyad vs. Usman Abbas Sayyad MANU/SC/5541/2006: (2007) 2 SCC 355, held that the core question is as to whether an order passed by a person lacking inherent jurisdiction would be a nullity. It will be so. The principles of estoppels, waiver and acquiescence or even res-judicata which are procedural in nature would have No. application in a case where an order has been passed by the tribunal/court which has No. authority in that behalf. Any order passed by a Court without jurisdiction would be coram non judice, being a nullity, the same ordinarily should not be given to".

3.7. Relying on the pleadings made in the Writ Petition and the decisions cited (*supra*), learned Senior Counsel contended that since the position of the Petitioner in the rank of Forester was shown above Opposite Party No.5 all through in the gradation list published in the

year 2013, 2016 and 2017 and the same was never challenged, the said placement of the Petitioner attained finality in the eye of law and it should not have been changed suo-motu by the opposite party no.2 while publishing the tentative gradation list on 10.01.2019 under Annexure-8. Not only that even though the Petitioner filed his objection to the said placement made in the tentative gradation list, but the Opposite Party No.2 by illegally relying on the clarification issued by the Opposite Party No.1 in letter dated 13.04.2017, rejected the petitioner's claim with publication of the impugned gradation list on dated 20.02.2019 under Annexure-10. Accordingly, it is contended that the gradation list at Annexure-10 having been published illegally by the opposite party No.2, by unsettling the settled position, the same is not legally sustainable in the eye of law and liable for interference of this Court.

4. Mr. Goutam Mishra, learned Senior Counsel appearing for the Intervenor in I.A No.282 of 2022 and supporting the case of the writ petitioner submitted

that the writ petitioner admittedly joined in Government service on 19.11.2010, whereas the opposite party No.5 after completing his training joined in his service on 18.10.2010 and the said date of joining of the petitioner and opposite party no.5 were reflected in their respective service books. Taking into account such joining of the petitioner and the opposite party No.5, the petitioner all through was placed above the opposite party no.5 in the gradation list published in the year 2013, 2016 and 2017. But challenging the placement of the Forester in the gradation list published in the year 2017, O.A No.312 of 2018 was filed by one of the Forester and the said O.A was disposed of vide order dated 19.02.2018 with a direction on the opposite party No.2 to consider the grievance of the petitioner therein as made in his representation. Basing on the said order passed by the learned Tribunal on 19.02.2018 in O.A No.312 of 2018, the tentative gradation list of Forester was published on 10.01.2019 wherein for the first time opposite party no.5 was placed above the petitioner.

4.1. It is also contended that while rejecting the claim of the petitioner with publication of the impugned gradation list under Annexure-10, the reliance placed by the opposite party no.2 to the letter issued by the Government on 13.04.2017 is mis-conceived and the said clarification contained in the letter dated 13.04.2017 cannot be made applicable to determine the seniority of the petitioner as well as the Intervenor-petitioner vis-a-vis opposite party no.5.

4.2. It is also contended that the relaxation granted by the State-Opposite Party No.1 in its order under Annexure-4 dated 11.11.2010 was never challenged by anybody and in view of the stipulation contained in the said order, the petitioner and similarly situated Foresters appointed in different Kendu Leaf Division were rightly placed above the Foresters, who were sent to undergo the training after their joining in terms of Annexure-2.

4.3. It is also contended that in view of the provision contained under Rule-22 of the Rules, since the date of joining of the Foresters is to be reckoned from the date

of completion of the training, the opposite party no.5 since joined in his service on 18.10.2011 after completing of the training, the date of joining can never be taken as 18.10.2010.

4.4. Mr. G. Mishra, learned Senior Counsel in support of his submission relied on the decisions of the Hon'ble Apex Court as well as of this Court reported in:-

1. **State of Uttaranchal & Another vs. Shiv Charan Singh Bhandari & Others (2013) 12 SCC 179.**
2. **Shiv Dass vs. Union of India & Others (2007) 9 SCC 274.**
3. **Amarendra Kumar Mohapatra & Others vs. State of Orissa & Others (2014) 4 SCC 583.**

4.5. Hon'ble Apex Court in the case of **State of Uttaranchal & Another (supra)**, in Paragraphs-19, 23, 24 & 27 has held as follows:-

"19. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time.

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23. In *State of T.N. v. Seshachalam* [(2007) 10 SCC 137 : (2008) 1 SCC (L&S) 475], this Court, testing the equality clause on the bedrock of delay and

laches pertaining to grant of service benefit, has ruled thus: (SCC p. 145, para 16)

“16. ... filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.”

24. *There can be no cavil over the fact that the claim of promotion is based on the concept of equality and equitability, but the said relief has to be claimed within a reasonable time. The said principle has been stated in Ghulam Rasool Lone v. State of J&K .*

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27. *We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Anyone who sleeps over his right is bound to suffer. As we perceive neither the Tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion”.*

4.6. Similarly, Hon’ble Apex Court in the case of **Shiv**

Dass vs. Union of India & Others (supra), in

Paragraph-10 has held as follows:-

“10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years

normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone."

4.7. Hon'ble Apex Court in the case of **Amarendra Kumar Mohapatra & Others (supra)**, in Paragraphs-73, 74 & 75 has held as follows:-

"73. We may also refer to a three-Judge Bench of this Court in Union of India and Anr. etc. etc. v. Lalita S. Rao and Ors. etc. etc. (2001) 5 SCC 384 where doctors appointed by Railway Administration on ad hoc basis had been upon regularization granted seniority from the date of their ad hoc appointment. This Court held that proposition B stated in Direct Recruits case (supra) permitted such seniority being granted. This Court observed:

"Obviously the Court had in mind the principle B evolved by the Constitution Bench in the Direct Recruit Engineering Officers Association case (supra). If the initial appointment had not been made in accordance with the prescribed procedure laid down by the Recruitment Rules, and yet the appointees Medical Officers were allowed to continue in the post uninterruptedly and then they appeared at the selection test conducted by the Union Public Service Commission, and on being selected their services stood regularised then there would be no justification in not applying the principle 'B' of the Direct Recruit Class II Engineering Officers Association case (supra) and denying the period of officiating services for being counted for the purpose of seniority."

74. Reference may also be made to the decision of this Court in State of Andhra Pradesh & Anr. V. K.S. Muralidhar & Ors. (1992) 2 SCC 241 where the Government of India gave weightage to service rendered

by employees prior to their regularisation. The dispute in that case was regarding inter se seniority between the Supervisors who were upgraded as Junior Engineers and the degree holders who were directly appointed as Junior Engineers. This Court held that the State Government had as a matter of policy given weightage to both the categories and that there was nothing unreasonable in giving a limited benefit or weightage to the upgraded Supervisors in the light of their experience. This Court said:

17.....The question to be considered is from which date the weightage of four years' service should be given to the upgraded Junior Engineers namely the Supervisors. Is it the date of acquiring the degree qualification or the date of their appointment? Having given our earnest consideration and for the reasons stated above we hold that the weightage can be given only from the date of their appointment.

18.....The Tribunal in the course of its order, however, observed that in accordance with the existing rules the appointments of these Junior Engineers from the notional date have to be cleared by the Public Service Commission and the appointments cannot be held to be regular appointments as long as they are not approved by the Public Service Commission.....

19.....To sum up, our conclusions are as under:

(i) The weightage of four years in respect of upgraded Junior Engineers as provided in G.O. Ms. No. 559 has to be reckoned from the date of appointment and not the date of their acquiring the degree qualification;

(ii) On the basis of that notional date, their inter-se seniority has to be fixed;

(iii) The regularisation of the degree-holder Junior Engineers who passed the SQT by giving retrospective effect cannot be held to be illegal, and their seniority among themselves shall be subject to the order of ranking given by the Public Service Commission on the basis of the SQT;

iv) The Government shall prepare a common seniority list of the degree-holders Junior Engineers and the upgraded Junior Engineers on the above lines and that list shall be the basis for all the subsequent promotions. Promotions, if any, already given shall be reviewed and readjusted in accordance with the said seniority list; and

(v) The approval of the Public Service Commission in respect of these appointments and their seniority thus fixed need not be sought at this distance of time.” (emphasis supplied).

75. In *Narender Chadha & Ors. v. Union of India & Ors.* (1986) 2 SCC 157, this Court was dealing with a somewhat similar fact situation. The petitioners in that case were not promoted by following the actual procedure prescribed by the relevant Service Rules even though the appointments were made in the name of the President by the competent authority. They had based on such appointments, continuously held the post to which they were appointed and received salary and allowances payable to incumbent of such post. The incumbents were entered in the direct line of their promotion. The question, however, was whether it would be just and proper to hold that such promotees had no right to the post held by them for 15-20 years and could be reverted unceremoniously or treated as persons not belonging to the service at all. Repelling the argument that such service would not count for the purposes of seniority, this Court observed: “ It would be unjust to hold at this distance of time that on the facts and in the circumstances of this case the petitioners are not holding the posts in Grade IV. The above contention is therefore without substance. But we, however, make it clear that it is not our view that whenever a person is appointed in a post without following the Rules prescribed for appointment to that post, he should be treated as a person regularly appointed to that post. Such a person may be reversed from that post. But in a case of the kind before us where persons have been allowed to function in higher posts for 15 to 20 years with due deliberation it would be certainly unjust to hold that they have no sort of claim to such posts and could be reverted unceremoniously or treated as persons not belonging to the Service at all, particularly where the Government is endowed with the power to relax the Rules to avoid unjust results. In the instant case the

Government has also not expressed its unwillingness to continue them in the said posts. The other contesting respondents have also not urged that the petitioners should be sent out of the said posts. The only question agitated before us relates to the seniority as between the petitioners and the direct recruits and such a question can arise only where there is no dispute regarding the entry of the officers concerned into the same Grade. In the instant case there is no impediment even under the Rules to treat these petitioners and others who are similarly situated as persons duly appointed to the posts in Grade IV because of the enabling provision contained in the Rule 16 thereof. Rule 16 as it stood at the relevant time read as follows : 16. The Government may relax the provisions of these rules to such extent as may be necessary to ensure satisfactory working or remove in-equitable results.” (emphasis supplied)”.

5. Mr. R.N.Mishra, learned Additional Government Advocate for the State on the other hand made his submission basing on the stand taken in the counter affidavit. It is first of all contended that both the learned Senior Counsels appearing for the Petitioner and Intervenor-Petitioner in I.A. No.282 of 2022 have mis-construed the relaxation given by the Government vide Office order dated 11.11.2010 under Annexure-4. In the said order in Clause-2, it was envisaged as follows:-

“That by allowing them to join in service without undergoing the prescribed prior training would not affect their seniority vis-à-vis the Foresters of other wings undergoing training earlier to them”.

5.1. Accordingly, it is contended that without adhering to the said stipulation contained in the office order dated 11.11.2010, the seniority list of Foresters was published in the year 2013, 2016 and 2017 by placing the Petitioner over Opposite Party No.5. But while issuing the tentative gradation list of Foresters under Annexure-8, the said stipulation was carried out and accordingly it was found that since the Petitioner joined in the rank of Forester on 19.11.2010 and the Opposite Party No.5 had joined earlier on 18.10.2010, when he was deputed to undergo the training, the date of joining of the Opposite Party No.5 should be taken as 18.10.2010 and that of the Petitioner as 19.11.2010.

5.2. It is also contended that though in terms of Annexure-2, the Opposite Party No.5 was directed to undergo the training after his joining on 18.10.2010, which he completed on 18.10.2011, but the Petitioner in view of the request made by the Opposite Party No.3 under Annexure-3 and his earlier letter issued on dtd.04.10.2010, though the Petitioner was allowed to join as a Forester without undergoing training, but he was extended with the benefit of stipend for one year as like the opposite party

No.5, who was paid with such stipend during his training period of one year.

5.3. Mr. Mishra, further submitted that in letter dated 13.04.2017 issued by the Government –opposite party No.1 under Annexure-I, since it was clarified that the seniority of Foresters appointed under the Rehabilitation Assistance Scheme is to be reckoned from the date of joining in the training or in the division, whichever is earlier, applying the said principle, Opposite Party No.2 while publishing the tentative gradation list of Forester on 10.01.2019 under Annexure-8, placed the opposite party no.5 above the petitioner, taking into account the date of joining of the opposite party no.5 as 18.10.2010 and that of the petitioner as 19.11.2010. Accordingly, it is contended that since the Petitioner was allowed to join as a Forester without undergoing the training in view of the order passed by the Government under Annexure-4 on 11.11.2010 and the opposite party no.5 after his joining on 18.10.2010 was deputed to undergo the training and after such completion of his training he rejoined in his post on 18.10.2011, it cannot be said that the date of joining of the Opposite Party No.5 is 18.10.2011. Accordingly, it is contented that no illegality or irregularity has been committed by the Opposite

Party No.2 in placing the petitioner below opposite party no.5 in the gradation list of Forester published under Annexure-8 and consequential rejection of the petitioner's claim with publication of the final gradation list under Annexure-10.

6. Mr. Jagannath Pattanaik, learned Senior Counsel, who has entered appearance for the private opposite party No.5 on the other hand made his submission relying on the stand taken by the State in their counter. Learned Senior Counsel while accepting the stand taken by the opposite party no.2 in his counter, submitted that pursuant to the advertisement published in the year 2009-10, while the petitioner made his application for his selection to the post of Forester in Kuchinda K.L. Division, the opposite party No.5 made his application in respect of Rairangapur Wildlife Division. While the Petitioner was issued with the order of appointment on 16.11.2010 under Annexure-5, where he joined on 19.11.2010, without undergoing the required training as provided under Rule-22 of the Rules, the Opposite Party No.5 after his joining in the division on 18.10.2010 was deputed to undergo the training and after completion of such training, he rejoined in his service on 18.10.2011. Since the Petitioner has admittedly joined

subsequent to the date of joining of the opposite party no.5, the wrong committed by the opposite party no.2 in placing the petitioner above the opposite party no.5 in the gradation list published in the year 2013, 2016 and 2017 was corrected by the self-same opposite party no.2 while publishing the tentative gradation list at Annexure-8.

6.1. It is also contended that on his joining on 18.10.2010 when the opposite party no.5 was deputed to undergo the training, he was paid with the stipend for the entire period of training of one year. As per the stipulation contained in the order at Annexure-4, the Petitioner was also paid with the stipend for the period of one year. Therefore, the relaxation given to the petitioner and similarly situated Foresters selected in K.L. Division to join in their post prior to completing the training by no means will allow them to be placed above the opposite party no.5 in the rank of Foresters as Opposite Party No.5 admittedly joined on 18.10.2010 and in view of the provision contained under Rule-22 and on being duly selected, he was deputed to undergo the training.

6.2. Mr. Pattanaik, learned Senior Counsel also contended that in view of the clarification issued by the Government-

Opposite Party No.1, while issuing the clarification vide letter dated 13.04.2017 under Annexure-I to the counter filed by State, the Opposite Party No.2 by following the said clarification, rightly placed the opposite party no.5 above the petitioner in the tentative gradation list published in the year 2019 under Annexure-8.

6.3. It is also contended that the *inter se* seniority of Foresters as provided under Rule-12 of the 1998 Rules is to be determined with reference to the position in the list prepared by the Selection Board and approved by the appointing authority. Since the petitioner is placed below the opposite party No.5 in the merit list, he was not included in the list of 1st batch of Foresters recommended by the competent authority to undergo the training vide order at Annexure-2 dated 28.09.2010.

6.4. It is also contended that since the petitioner admittedly joined as a Forester in the Department on 19.11.2010 and the opposite party No.5 had joined as such on 18.10.2010, when he was deputed to undergo the training, the date of joining of the opposite party no.5 cannot be held to be subsequent to the date of joining of the petitioner in the rank of Forester. Since admittedly

the Opposite Party No.2 committed a wrong in placing the Petitioner above the Opposite Party No.5 in the gradation list published in the year 2013, 2016 and 2017 under Annexure-6-Series, the said authority is also competent to correct the same as the said gradation list was published without following the relevant rules prescribed under 1998 Rules.

6.5. Mr. Pattanaik, in support of his aforesaid submissions relied on the decision of the Hon'ble Apex Court in the case of **K.Meghachandra Singh & Others vs. Ningam Siro & Others** reported in **(2020) 5 SCC-689** and the case **Ajay Kumar Shukla and Others vs. Arvind Rai and Others** reported in **2021 SCC Online SC-1195**.

6.6. Hon'ble Apex Court in the case of **K.Meghachandra Singh & Others (supra)**, in Paragraphs-28 & 32 to 39 has held as follows:-

“28. Before proceeding to deal with the contention of the appellants' counsel vis-à-vis the judgment in N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] , it is necessary to observe that the law is fairly well settled in a series of cases, that a person is disentitled to claim seniority from a date he was not borne in service. For example, in Jagdish Ch. Patnaik [Jagdish Ch. Patnaik v. State of Orissa, (1998) 4 SCC 456 : 1998 SCC (L&S) 1156] the Court considered the question whether the year in which the vacancy accrues can have any bearing for the purpose of determining the seniority irrespective of the

fact when the person is actually recruited. The Court observed that there could be time-lag between the year when the vacancy accrues and the year when the final recruitment is made. Referring to the word "recruited" occurring in the Orissa Service of Engineers Rules, 1941 the Supreme Court held in Jagdish Ch. Patnaik [Jagdish Ch. Patnaik v. State of Orissa, (1998) 4 SCC 456 : 1998 SCC (L&S) 1156] that person cannot be said to have been recruited to the service only on the basis of initiation of process of recruitment but he is borne in the post only when, formal appointment order is issued.

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32. *As can be seen from the above, the MPS Rules, 1965 never provided that seniority should be counted from the date of vacancy. For those covered by the MPS Rules, 1965 the seniority for them will be reckoned only from the date of appointment and not from the stage when requisition for appointment was given.*

33. *In the above context, it is also necessary to refer to the relevant advertisement issued in 2005 for direct recruitment which allowed the aspirants to apply even if their result in the qualification examination is awaited. Even more intriguing and significant is the relaxation that those proposing to appear in the qualifying examination are also allowed to respond to the advertisement. If such be the nature of the process initiated (in the year 2005) for making direct recruitment, we can easily visualise a situation where, in the event of granting seniority from the stage of commencing the process, a person when eventually appointed, would get seniority from a date even before obtaining the qualification, for holding the post.*

34. *The judgment in N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] is*

now to be considered in some detail as this is heavily relied on by the appellants' counsel. At the outset, it must however be cleared that the cited case had nothing to do with the MPS Rules, 1965 and that litigation related to the Income Tax Inspectors who were claiming benefits of various Central Government OMs (dated 22-12-1959, 7-2-1986, 3-7-1986 and 3-3-2008). The judgment was rendered in respect of the Central Government employees having their own Service Rules.

The applicable Rules for the litigants in the present case however provide that the seniority in the service shall be determined by the order in which appointments are made to the service. Therefore, the memorandums concerned referred to in N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] which deal with general principles for determination of seniority of persons in the Central Government service, should not according to us, have any overriding effect for the police officers serving in the State of Manipur.

35. *After the judgment in N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] was delivered, the Union of India issued the Office Memorandum on 4-3-2014 defining the recruitment year to be the year of initiating the recruitment process against the vacancy year and that the rotation of quota, would continue to operate for determination of inter se seniority between direct recruits and promotees. This Memo was not made applicable to the State of Manipur till the issuance of the OM dated 21-12-2017, adopting the OM dated 4-3-2014 prospectively with effect from 1-1-2018. Significantly, the said OM specifically provided that “... appointments/promotions made before the issue of this OM will not be covered by this OM. The seniority already fixed as per existing rules followed earlier in the State prior to the issue of this OM may not be reopened.” It was also specifically stated therein that “this OM will come into effect from 1-1-2018 with the publication in the Gazette....”*

36. *From the above, it is not only apparent that the above OM was only to be given prospective effect from 1-1-2018 but it contains an express acknowledgment that this was not the position prior to the issuance of the OM and that a different rule was followed earlier in the State. The conclusion is, therefore, inevitable that at least prior to 1-1-2018, direct recruits cannot claim that their seniority should be reckoned from the date of initiation of recruitment proceedings and not from the date of actual appointment.*

37. *When we carefully read the judgment in N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711], it appears to us that the referred OMs (dated 7-2-1986 and 3-7-1986) were not properly construed in the judgment. Contrary to the*

eventual finding, the said two OM's had made it clear that seniority of the direct recruits be declared only from the date of appointment and not from the date of initiation of recruitment process. But surprisingly, the judgment while referring to the illustration given in the OM in fact overlooks the effect of the said illustration. According to us, the illustration extracted in *N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711]* itself, makes it clear that the vacancies which were intended for direct recruitment in a particular year (1986) which were filled in the next year (1987) could be taken into consideration only in the subsequent year's seniority list but not in the seniority list of 1986. In fact, this was indicated in the two OM's dated 7-2-1986 and 3-7-1986 and that is why the Government issued the subsequent OM on 3-3-2008 by way of clarification of the two earlier OM's.

38. At this stage, we must also emphasise that the Court in *N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711]* need not have observed that the selected candidate cannot be blamed for administrative delay and the gap between initiation of process and appointment. Such observation is fallacious inasmuch as none can be identified as being a selected candidate on the date when the process of recruitment had commenced. On that day, a body of persons aspiring to be appointed to the vacancy intended for direct recruits was not in existence. The persons who might respond to an advertisement cannot have any service-related rights, not to talk of right to have their seniority counted from the date of the advertisement. In other words, only on completion of the process, the applicant morphs into a selected candidate and, therefore, unnecessary observation was made in *N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711]* to the effect that the selected candidate cannot be blamed for the administrative delay. In the same context, we may usefully refer to the ratio in *Shankarsan Dash v. Union of India [Shankarsan Dash v. Union of India, (1991) 3 SCC 47 : 1991 SCC (L&S) 800]*, where it was held that even upon empanelment, an appointee does not acquire any right.

39. The judgment in *N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711]* relating to the Central Government employees cannot in our opinion, automatically apply to the Manipur State

Police Officers, governed by the MPS Rules, 1965. We also feel that N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] had incorrectly distinguished the long-standing seniority determination principles propounded in, inter alia, Jagdish Ch. Patnaik [Jagdish Ch. Patnaik v. State of Orissa, (1998) 4 SCC 456 : 1998 SCC (L&S) 1156], Suraj Parkash Gupta v. State of J&K [Suraj Parkash Gupta v. State of J&K, (2000) 7 SCC 561 : 2000 SCC (L&S) 977] and Pawan Pratap Singh v. Reevan Singh [Pawan Pratap Singh v. Reevan Singh, (2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481]. These three judgments and several others with like enunciation on the law for determination of seniority makes it abundantly clear that under service jurisprudence, seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre. In our considered opinion, the law on the issue is correctly declared in Jagdish Ch. Patnaik [Jagdish Ch. Patnaik v. State of Orissa, (1998) 4 SCC 456 : 1998 SCC (L&S) 1156] and consequently we disapprove the norms on assessment of inter se seniority, suggested in N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711]. Accordingly, the decision in N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] is overruled. However, it is made clear that this decision will not affect the inter se seniority already based on N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] and the same is protected. This decision will apply prospectively except where seniority is to be fixed under the relevant rules from the date of vacancy/the date of advertisement”.

6.7. Hon’ble Apex Court in the case of **Ajay Kumar Shukla and Others (supra)**, in Paragraphs-21 to 24, 27, 35 and 53 has held as follows:-

“21. We may now discuss the law on the point regarding delay in approaching the court and in particular challenge to a seniority list. The learned Single Judge had placed reliance on a judgment of this Court in the case of Shiba Shankar Mohapatra vs. State of Orissa (supra). Dr. B.S. Chauhan, J., after

considering the question of entertaining the petition despite long standing seniority filed at a belated stage discussed more than a dozen cases on the point including Constitution Bench judgments and ultimately in paragraph 30 observed that a seniority list which remains in existence for more than three to four years unchallenged should not be disturbed. It is also recorded in paragraph 30 that in case someone agitates the issue of seniority beyond period of three to four years he has to explain the delay and laches in approaching the adjudicatory forum by furnishing satisfactory explanation. Paragraph 30 is reproduced below: -

“30. Thus in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In K.R. Mudgal, this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation.”

22. On the other hand, the Division Bench while shutting out the appellants on the ground of delay relied upon following judgments of this Court.

- Dayaram Asanand Gursahani vs. State of Maharashtra and others²
- B.S. Bajwa and another vs. State of Punjab and others³
- Malcom Lawrence Cecil D'Souza vs. Union of India and others⁴
- R.S. Makashi and others vs. I.M. Menon and others⁵

23. In the case of Dayaram Asanand Gursahani (supra), there was a delay of 9 years. In the case of B.S. Bajwa (supra), there was a delay of more than a decade. In Malcom Lawrence Cecil D'Souza (supra), the delay was of 15 years and in R.S. Makashi (supra) there was a delay of 8 years. In all these cases, this court has recorded that the delay has not been

explained. *Shiba Shankar Mohapatra (Supra)* is a judgment of 2010, which has laid down that, three to four years would be a reasonable period to challenge a seniority list and also that any challenge (1984) 3 SCC 36 (1998) 2 SCC 523 (1976) 1 SCC 599 (1982) 1 SCC 379 beyond the aforesaid period would require satisfactory explanation.

24. In view of the above legal proposition, we now examine the facts of the present case, firstly, as to whether there was delay of more than three to four years and secondly, if there was delay of more than three to four years, whether the same has been satisfactorily explained.

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27. Once it is established that the seniority list was prepared in contravention to the statutory provisions laid down in Rules 1991, the seniority list could be interfered with. The Appointing Authority would be bound by the statutory rules and any violation or disregard to the statutory rules would vitiate the seniority list. The same would be arbitrary, *de hors* the rules and in conflict with Articles 14 and 16 of the Constitution. The only exception to the above would be where there is unreasonable delay which is unexplained.

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35. The plea to defend the seniority list prepared contrary to the statutory provisions on the ground of delay would be a difficult proposition. Apart from the submission of the appellants that there is no delay as they came to know of the three separate lists only in March, 2010, even if it is assumed that there was some delay and a fresh seniority list was being prepared in 2009-2010 again contrary to the provisions of statutory rules, such seniority list cannot be sustained or defended on the ground of delay of five years.

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53. For all the reasons recorded above, we find that the Division Bench fell in error in allowing the appeal and dismissing the writ petition. The learned Single Judge was right in his view in setting aside the final seniority list and directing the appointing authority for preparation of fresh seniority list in accordance with Rules 1991, be it Rule 5 or Rule 8 thereof".

6.8. Mr. Pattanaik also relied on the decision of this Court in the case of **Sujata Patra vs. The Vice-Chancellor, Utkal University and Others**. In Paragraphs-13, 14 and 15, this Court has held as follows:-

“13. In view of the pleadings available on record, if a mistake has been committed by the authority, it has got every right to rectify the same.

14. In Raj Kumar Soni v. State of U.P., (2007) 10 SCC 635 the apex Court, following Gadde Venkateswara Rao v. Govt. of A.P., AIR 1966 SC 828 and M.C. Mehta v. U.O.I., AIR 1999 SC 2583, held that it is not always necessary for the Court to strike down an order merely because the order has been passed in breach of the principles of natural justice. The Court can refuse to exercise its discretion if striking down such an order will result in restoration of another order passed in Sujata Patra vs The Vice-Chancellor on violation of the principles of natural justice or otherwise not in accordance with law.

15. Keeping in view the law laid down by the apex Court, as discussed above, if a mistake was committed by the authority and on its detection the same was rectified by revision of the result, this Court is of the considered view that no illegality or irregularity has been committed by the authority so as to exercise the extraordinary jurisdiction of the Court by invoking Article 226 of the Constitution of India”.

7. Mr. S. Behera, learned counsel for the Private Opposite Party Nos.6 and 7, while supporting the argument made by the learned State counsel as well as learned Senior Counsel appearing for Opposite Party No.5 submitted that the Opposite Party No.6 challenging his placement vis-à-vis, the Petitioner in

the gradation list published in the year 2013 and 2017, though filed his objection but the same was never considered by the Opposite Party No.2. However, the gradation list published under Annexure-6-Series has got no sanctity in the eye of law as the same was never prepared and published in terms of the provision contained under 1998 Rules.

8. Similarly, supporting the case of opposite party No.5, Mr. Goutam Mukherji, learned Senior Counsel appearing for Opposite Party Nos.8 & 11 contended that the gradation list of Foresters published in the year 2013, 2016 and 2017, having not been prepared and published in accordance with the 1998 Rules, the position given to the Petitioner vis-à-vis Opposite Party No.5 as well as to Opposite Party Nos.8 to 11 cannot be held to be the settled positions. Opposite party no.2 placing reliance on the guidelines issued by the Government in letter dated 13.04.2017 vide Annexure-I to the counter, rightly placed the Opposite Party No.5 as well as Opposite Party Nos.8 to 11 above the petitioner in the tentative gradation list published

under Annexure-8 and confirmed the same vide Annexure-10.

8.1. It is contended that since the Opposite Party No.5 as well as Opposite Party Nos.6 to 11 were deputed to undergo the training on their joining as Foresters prior to the joining of the petitioner, they were rightly placed above the petitioner in the tentative gradation list published under Annexure-8. Not only that after due consideration of the objection submitted by the petitioner, his claim was rightly rejected by the opposite party No.2 with publication of the final gradation list on 20.02.2019 under Annexure-10. Mr. Mukherji, learned Senior Counsel in support of his aforesaid submission relied on the decision of the Hon'ble Apex Court in the case of **K.Anjaneyulu & Others vs. T.Ashok Raju & Others** reported in **(2019) 20 SCC-677**.

8.2. Hon'ble Apex Court in the case of **K.Anjaneyulu & Others (supra)**, in Paragraphs-6 held as follows:-

"6. The grievance of the appellants is that the seniority has to be fixed as per Regulation 26. Regulation 26 does

not deals with inter se seniority. As far as L.D.Cs are concerned, L.D.Cs posted in the account section and various other Sections are required to undergo training before commencement of probation as against others posted to General and Personnel Sections. Merely because they were required to undergo training, their seniority cannot be counted from the date they have joined post after completion of training. If their date of the joining in the post after completion of training is taken into account for counting of their seniority it would cause serious hardship to them”.

9. I have heard Mr. B. Routray, learned Senior Counsel appearing for the Petitioner along with Mr. G.Mishra, learned Senior Counsel appearing for the Intervenor-Petitioner in I.A No.282 of 2022. I have also heard Mr. R.N.Mishra, learned Addl. Government Advocate and Mr. J.Pattanaik learned Senior Counsel appearing for the Opposite Party No.5, Mr. S.Behera, learned counsel appearing for Opposite Party Nos.6 & 7, and Mr. G. Mukherjee, learned Senior Counsel appearing for the Opposite Party Nos.8 to 11. On the consent of the learned counsel appearing for the parties, the matter was finally heard at the stage of admission and disposed of by the present order.

10. This Court after going through the pleadings made and the materials available on record finds that pursuant to the selection process initiated in the year

2009-10, the Petitioner was selected as Forester in respect of Kuchinda K.L. Division. Similarly, Opposite Party No.5 as well as Opposite Party No.6 to 11 were also selected and appointed as Forester in different Wildlife / Territorial Divisions. While the private opposite parties were deputed to undergo the training after their joining on the Division on 18.10.2010 basing on Annexure-2, the Petitioner joined as a Forester without undergoing the training on 19.11.2010 in terms of the order issued on 11.11.2010 under Annexure-4. This Court therefore finds that there is no dispute with regard to the date of joining of the private opposite party no.5 on 18.10.2010 and that of the petitioner on 19.11.2010. The opposite party no.5 after completing his training, rejoined on 18.10.2011 in terms of the stipulation contained under Rule-24 of the Rules.

10.1. As provided under Rule-22 read with Rule-24 of the Rules, a candidate who is recruited directly or by way of promotion shall undergo the training as prescribed by the Government in Forest Department.

Candidates who successfully complete the training may remain on probation for a further period of one year and on successful completion of probation, he may be confirmed in the cadre subject to availability of a substantive vacancy in the cadre. In the case in hand, the Petitioner without undergoing the training and in view of the order passed by the Government under Annexure-4 was allowed to join as a Forester on 19.11.2010. But the private opposite party No.5 though joined as a Forester on 18.10.2010, but in view of the provision contained under Rule-22 of the Rules, he was deputed to undergo the training on 18.10.2010 and after completion of the same, he was allowed to rejoin on 18.10.2011. But the fact remains both the Petitioners and Opposite Party No.5 were paid with stipend for the prescribed one (1) year period.

10.2. This Court further finds that the Petitioner though was allowed to undergo the training only in the year 2012, but in view of the stipulation contained in the order at Annexure-4, the petitioner maintained his seniority with his date of joining as 19.11.2010.

Therefore, it is the view of this Court that the date of joining of the opposite party no.5 cannot be taken as 18.10.2011 as he joined in the Department on 18.10.2010 and deputed to undergo one year Forester training, which he completed on 18.10.2011. The Petitioner though was allowed to join on 19.11.2010 without undergoing the training, but as per the stipulation contained in Annexure-4, he was given his seniority from his date of joining i.e. 19.11.2010.

10.3. It is also the view of this Court that the Opposite Party No.2 while publishing the gradation list in the year 2013, 2016 and 2017 never take into consideration the stipulation contained in the order at Annexure-4 in its proper perspective nor followed the provisions contained under the 1998 Rules. Since the Petitioner as like the opposite party no.5 were paid with the stipend for one year, it is to be construed that the petitioner completed the training i.e. on 19.11.2011 and the opposite party no.5 on 18.10.2011. Therefore, on either count, the date of joining of the opposite party no.5 is earlier than that of the petitioner. The

opposite party no.2 since while publishing the gradation list in the year 2013, 2016 and 2017 never take into consideration the true intent and spirit of the order at Annexure-4, the gradation list published by him in the year 2013, 2016 and 2017 cannot be taken as the correct gradation list and the petitioner cannot take advantage of the same. Because of such wrong committed by Opposite Party No.2, it cannot be held that the position of the Petitioner vis-à-vis Opposite Party No.5 in the rank of Forester is a settled one.

10.4. This Court further finds that even though the Opposite Party No.6 all through submitted his objection to the gradation list published in the year 2013 and 2017, but the same was never considered by the opposite party no.2, till the clarification was issued by the Government on 13.04.2017. Therefore, this Court is unable to accept the submissions of the learned Senior Counsel appearing for the Petitioner as well as that of the Intervenor-Petitioner in I.A No.282 of 2022 that in view of the position of the petitioner in the

gradation list published in the year 2013, 2016 and 2017, the same cannot be changed and thereby disturbing the settled position in view of the decision of the Hon'ble Apex Court so relied on by the learned Senior Counsels as cited supra.

10.5. In the instant case, this Court also finds that the law for determination of seniority makes it abundantly clear that under service jurisprudence, seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre.

11. As per the considered view of this Court, the decision relied on by Mr. J. Pattnaik and Mr. G. Mukherji, learned Senior Counsels appearing for the private Opposite Party Nos.5 and 8 to 11 are in fact applicable to the facts of the present case. In the reported decision relied on by Mr. Mukherjee, it is the view of the Hon'ble Apex Court that merely because an employee is required to undergo the training, his seniority cannot be counted from the date he joined the post after completion of training. If the date of joining in the post after completion of the training is taken into

account for counting of seniority, it would cause serious prejudice. Similarly as per the decision relied on by Mr. J. Pattanaik, learned Senior Counsel, since the Petitioner was not in the cadre of Foresters prior to joining of the private Opposite Party No.5 and the gradation list published under Annexure-6-Series having not been prepared and published as per the 1998 Rules, the Petitioner cannot claim seniority over the private Opposite Party No.5. In the instant case, the Opposite Party No.5 admittedly joined the Department on 18.10.2010 and the Petitioner joined on 19.11.2010. While the Opposite Party No.5 due to his undergoing the training was paid with the stipend for one year, the Petitioner without being sent to training was also paid with the stipend as per the order under Annexure-4. Hence, it cannot be held that the Petitioner joined in the rank of Forester ahead of the Opposite Party No.5.

12. Therefore, taking into account the materials placed before this Court and the decisions governing the field, this Court finds no illegality or

irregularity in the final gradation list of Forester published on 20.02.2019 under Annexure-10. Accordingly, this Court is not inclined to entertain the prayer as made in the Writ Petition and while confirming the gradation list published under Annexure-10, dismiss the Writ Petition. However, there shall be no order as to costs.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 22th of December, 2022/ Subrat (Sr. Steno)

