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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

LPA-1406 of 2017 (O&M)
Date of decision:13.03.2023

UNION OF INDIA AND ANR.

... Appellants

Versus

SANJAY KUMAR AND ORS.

... Respondents

CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO,
HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Ms. Anita Balyan, Advocate for the appellants.

Mr. Vivek Singla, Advocate for respondent No.1.

M.S. RAMACHANDRA RAO, J. (ORAL)

Mr. Vivek Singla, Advocate has filed his power of attorney on behalf of respondent No.1 today in the Court which is taken on record.

This Letter Patent Appeal is preferred against the judgment dt. 16.12.2016 in CWP-8809-2012 passed by the learned Single Judge of this Court.

In the said Writ petition, respondent No.1 had questioned the validity of a seniority list of Junior Engineer (Electrical) and also sought for quashing an order dated 17.02.2012 by which his representation had been rejected by the appellants.

Respondent No.1 and other private respondents were candidates for recruitment to the post of Junior Engineer (Electrical) pursuant to an advertisement issued by the appellants in 2001-2002.

The appellants have classified the vacancies as 9 posts for General Merit, 2 posts for Scheduled Castes, 1 post for Scheduled Tribe and 04 posts for OBC and notified the select list accordingly.

Respondent No.1 was one of the selected candidates under the OBC Category and was appointed on 05.06.2002 and reported on 01.07.2002.

The other private respondents were placed in the reserved panel list having regard to the merit in the General Merit Category.

Some of the persons who were selected against the General Merit Category were declared medically unfit and others did not join leaving 6 vacancies in the General Merit Category.

Therefore, the reserve panel list of wait listed candidates were utilized to fill up those 6 vacancies under the General Merit Category and six such persons from the reserve panel list joined service on 16.10.2002 after respondent No.1. Respondent Nos.2-6 in the LPA are such persons.

It is not in dispute that for the first time a final seniority list of persons, who were working as Junior Engineer (Electrical), was notified on 25.01.2006; and in that seniority list, as on 01.01.2006, respondent No.1 was shown as senior to the respondent Nos.2-6.

The respondent Nos.2-6 acquiesced in the same and never complained against the said final seniority list.

Subsequently 5 years 10 months later, on 24.10.2011, another final seniority list of Junior Engineer (Electrical) was published by the appellants in which respondent No.1 was shown as junior to the respondent Nos.2-6 .

Respondent No.1 then gave a representation against the same contending that his seniority was erroneously fixed, which was rejected on by order dt.17.02.2012. In the said order, reference is made by the appellants to certain instructions issued by DoP&T under head 'Seniority of Direct Recruits and Promotees' at Para 2.1.1 which stated that inter se seniority of candidates

nominated from the reserve panel will be fixed as per consolidated merit given by the UPSC/SCC/Recruiting Agency.

Assailing the same, respondent No.1 had filed CWP-8809-2012.

The said Writ Petition was allowed by a learned Single Judge of this Court holding that since the contesting respondents entered the cadre of Junior Engineer (Electrical) on 16.10.2002 while the date of entry of respondent No.1 was 05.06.2002, only the date of entry into service is required to be taken into consideration for the purpose of fixing ranking in the seniority list of the Junior Engineer. He therefore, held that the respondent No.2-6 cannot be placed over respondent No.1. He also held that merely adjusting the respondent No.s 2 to 6 against the General Merit Category would not create a right to the said respondents to seek seniority over and above respondent No.1 as he was appointed earlier to the said respondents. He therefore set aside the impugned seniority list and ranking assigned insofar as respondent No.1 and the respondent No.s 2 to 6 are concerned and also the impugned order dated 17.02.2012 and directed the appellants to re-draw the seniority list while taking the date of entry into service for the purpose of fixing ranking in the seniority list of Junior Engineer.

Assailing the same, the State filed this Letter Patent Appeal with a delay of 196 days.

A Division Bench of this Court dismissed the Letter Patent Appeal on 03.08.2017.

Challenging the same the appellants filed Special Leave to Appeal(C) No.2249 of 2018 in the Supreme Court.

The Supreme Court passed orders on 23.01.2023 setting aside the order of the High Court insofar as the High Court refused to condone the delay in

filing the appeal and remitted the matter back to this Court for afresh consideration on merits.

Consideration by the Court

Heard counsel for the appellants and counsel for respondent No.1.

None represents respondents No.2 to 6.

Counsel for the appellants sought to contend that the order of the learned Single Judge is erroneous and the learned Single Judge should have taken note of the fact that respondents No.2 to 6, who belong to the General Category and who had been kept in the reserve panel initially, should have been given seniority over respondent No.1.

She further contended that though the seniority list of Junior Engineer (Electrical) as on 01.01.2006 had been circulated on 25.01.2006 in which respondent No.1 was shown as senior to respondents No. 2 to 6 herein, this was pointed by one G. Ravinder Babu as erroneous and the inter se ranking as per the combined merit list of direct entry Junior Engineer (Electrical) Grade-II appointed in 2002 was relied on to refix the seniority of respondent No.1 vis-a-vis respondent Nos. 2 to 6.

It is contended that the action of the appellants was proper as it was necessary to maintain the sanctity of the seniority list based on directions issued by the Department of Personnel & Training vide instruction dated 11.11.2010 under the heading "Seniority of Direct Recruits and Promotees".

It is also contended that the previous seniority list of Junior Engineers (Electrical) as on 01.01.2006 circulated on 25.01.2006 was not in accordance with the above referred instructions and was thus liable to be corrected by following due procedure; and since the discrepancy was noticed in 2011 while making promotions to the Posts of Inspector/J. E. (Electrical), the

defect was got rectified in this final seniority list dated 24.10.2011 rightly by the appellants.

Counsel for respondent No.1 refuted the said contentions and supported the judgment of the learned Single Judge.

We may point out that admittedly in the final seniority list circulated on 25.01.2006 of Junior Engineers (Electrical) as on 01.01.2006, respondent No.1 was shown as senior to respondents No.2 to 6.

Respondents No.2 to 6 never bothered to challenge the same and acquiesced in the same for 5years and 10 months i.e., by the date the subsequent seniority list was circulated on 24.10.2011. Thus the seniority fixed in the seniority list dt.25.01.2006 thus became a settled seniority.

The Supreme Court in *H.S. Vankani and Others Vs. Sate of Gujarat and Others*¹ had held that seniority is a Civil Right which has an important and vital role to play in one's service carrier. Future promotion of a Government servant depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum-seniority etc. *Seniority once settled is decisive* in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It held that if the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility among the Government Servants and the enthusiasm to do quality work might be lost. It reiterated the principle that *seniority once settled shall not be unsettled* by referring to its previous decisions. It declared:

“25 Seniority is a civil right which has an important and vital role to play in one's service career. Future promotion of a Government servant depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum-seniority etc. *Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty*

1 AIR 2010 SC 1714

*and assurance and boosts the morale to do quality work. It instills confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility among the Government servants and the enthusiasm to do quality work might be lost. Such a situation may drive the parties to approach the administration for resolution of that acrimonious and poignant situation, which may consume lot of time and energy. The decision either way may drive the parties to litigative wilderness to the advantage of legal professionals both private and Government, driving the parties to acute penury. It is well known that salary they earn, may not match the litigation expenses and professional fees and may at times drive the parties to other sources of money making, including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further it also consumes lot of judicial time from the lowest court to the highest resulting in constant bitterness among parties at the cost of sound administration affecting public interest. Courts are repeating the ratio that the seniority once settled, shall not be unsettled but the men in power often violate that ratio for extraneous reasons, which, at times calls for departmental action. Legal principles have been reiterated by this Court in **Union of India and Another v. S.K. Goel and Others** (2007) 14 SCC 641: (AIR 2007 SC 1199: 2007 AIR SCW 1235), **T.R. Kapoor v. State of Haryana** (1989) 4 SCC 71: (AIR 1989 SC 2082), **Bimlesh Tanwar v. State of Haryana**, (2003) 5 SCC 604: (AIR 2003 SC 2000: 2003 AIR SCW 1508)..... ”*

The Supreme Court in **Shiba Shankar Mohapatra and others Vs.**

State of Orissa and Others² has also held as under:-

*“18. The question of entertaining the petition disputing the long- standing seniority filed at a belated stage is no more res integra. A Constitution Bench of this Court, in **Ramchandra Shankar Deodhar v. State of Maharashtra** considered the effect of delay in challenging the promotion and seniority list and held that any claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have accrued to them during the intervening period.”*

² (2010) 12 SCC 471

Having regard to the settled principle that the '*settled seniority shall not be unsettled*' ; whatever may be the justification for the appellants to alter the seniority fixed on 25.01.2006, they ought to have kept in mind the said principle and they ought not have disturbed the said seniority in the subsequent seniority list circulated on 24.10.2011, five years and ten months years later when the respondents No.2 to 6 had never bothered to complain against the seniority circulated on 25.01.2006 and have acquiesced in the same.

Therefore, we affirm the decision of learned Single Judge though on different grounds and dismiss the appeal.

Accordingly, the appeal is dismissed.

All pending CMs, if any, shall stand disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

13.03.2023

Sonia

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