



2024:DHC:6434



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 6th August, 2024*

+ W.P.(C) 13102/2018 and CM APPL. 21807/2022

PRADOSH PANDA

.....Petitioner

Through: Mr. R.K. Saini, Mr. Ravi Kumar and
Ms. Tannu Kumari, Advocates.

versus

LOK SABHA SECRETARIAT & ANR

.....Respondents

Through: Mr. Pramod Gupta and Mr. Harsh
Jaiswal, Advocates with Mr. P. Ashok, Deputy
Secretary, LSS.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

JYOTI SINGH, J. (ORAL)

1. This writ petition is filed by the Petitioner assailing the action of the Respondents/Lok Sabha Secretariat ('LSS') in allegedly disturbing his seniority at the time of merger of two streams, i.e., Research Assistant and Reference Assistant by placing three persons from a different panel above him in the seniority list and seeking a consequent direction to the LSS to refix the seniority of the Petitioner as it existed at the time of promotion to the post of Executive Officer.

2. Factual narrative emerging from the writ petition is that Petitioner was selected through direct recruitment examination held in 1987 for appointment to the post of Research Assistant in LSS. Appointment was offered on 04.08.1988 but Petitioner's joining was delayed as he sought



three months' extension on personal grounds, which was granted but since he did not join within a maximum period of one month his seniority vis-à-vis other selected candidates in the same panel was affected. This position was amply clear from the confirmation letter dated 17.01.1992 in which names of Ms. Anita Bhatt and Mr. Stephen Abraham were placed over the Petitioner's name *albeit* they were below him in the combined merit list.

3. It is averred that vide Notification dated 12.06.1995 a list of 16 Research/Reference Assistants was published in which Petitioner was shown at Serial No.14 and names of three persons, who were not amongst the selected candidates for 1987 batch were shown at Serial Nos.11, 12 and 13 including of one Smt. Sushma Rungta. It was mentioned in the list that the 16 Research/Reference Assistants were being appointed to the grade of Executive Officer in official capacity w.e.f. 09.06.1995 up to 31.12.1995. It was not indicated that this list was an *inter se* seniority list amongst those shown in the seniority list.

4. LSS issued Notification dated 31.01.1997 stating that 16 persons mentioned therein will officiate as Executive Officers until further orders. In 2003, Petitioner and other officers were promoted to the post of Assistant Director and for the first time notification was issued by the LSS on 26.02.2005 fixing *inter se* seniority of 19 officers mentioned therein in which name of the Petitioner was at Serial No.12 and Sh. Pulin B. Bhutia, Sh. Harsh Chaturvedi and Smt. Sushma Rungta were placed at Serial Nos.9, 10 and 11, respectively. This according to the Petitioner disturbed his seniority without any show cause notice affecting his civil rights but Petitioner did not take recourse to legal remedies as a good employee and



only gave a representation dated 26.02.2005 objecting to the seniority, which was rejected vide memorandum dated 02.03.2005.

5. It is stated that Petitioner was promoted as Joint Director in 2007 and subsequently as Additional Director in 2012. In the meantime, Petitioner gave another representation on 24.09.2008 for refixation and restoration of his seniority which was rejected vide order dated 05.12.2008 on the ground that the seniority of the three officers above him was fixed at the time of merger of grade of Research Assistant and Reference Assistant based on the respective dates of joining and the grievance of the Petitioner that being from earlier panel, he should *en bloc* rank senior to those from subsequent panel had no merit as the panels were from the different streams. Several representations made subsequently met the same fate.

6. Getting no response from LSS, Petitioner filed an application on 17.06.2016 under Right to Information Act, 2005 ('RTI Act') and in response to the same, he was provided documents which included Minutes of the Meeting of Grievance Redressal Committee (GRC) dated 04.01.2016 in which it was accepted that Petitioner belonged to a senior panel and his case be referred to DoPT for further action, which, however, never happened. Petitioner again received some more documents under the RTI Act, which revealed that there were notings by different officers observing in his favour. After recommendation of GRC in favour of the Petitioner, his case was approved for refixation of seniority up to the level of Additional Secretary but the Secretary General, LSS differed on the ground that refixation of seniority from September, 1988 will entail financial benefits to the Petitioner and after this noting, file was not processed further and Petitioner approached this Court.



7. Mr. R.K. Saini, learned counsel for the Petitioner submits that the seniority of the Petitioner has been wrongly fixed at the time of merger of two streams, i.e., Research Assistants and Reference Assistants and 3 persons, namely, Sh. Pulin B. Bhutia, Sh. Harsh Chaturvedi and Smt. Sushma Rungta, belonging to a different grade and empanelled later, were placed above him in the *inter se* seniority list. Thus, Petitioner's seniority should be refixed and restored to a position above Sh. Pulin B. Bhutia and Smt. Sushma Rungta and since the refixation will be notional, no financial benefits will accrue to the Petitioner nor any financial loss will be caused to the two officers. It is submitted that Petitioner does not join issue with his being placed junior to Ms. Anita Bhatt and Mr. Stephen Abraham, who were his batchmates and below in merit, considering that Petitioner had himself sought extended joining time, however, officers from a different panel and grade cannot be placed above him on merger of two separate streams.

8. It is argued that Petitioner made several representations, without any delay for fixation of correct seniority but there has been no response. Notings in the concerned file show that once the GRC had made favourable recommendations recognizing that Petitioner was senior and had been wronged, the file was processed for suitable action to restore his seniority and till the level of Additional Secretary, LSS the unanimous opinion was that Petitioner's seniority ought to be refixed. For some unknown reason, however, the Secretary General, LSS did not agree and the reasoning for disagreement i.e., retrospective fixation of seniority will entail granting financial benefits to the Petitioner, was wholly flawed.

9. Mr. Saini argues that LSS has wrongly objected to the maintainability of this writ petition on the ground of delay and laches as there is no delay in



the Petitioner approaching the Court. It is for the first time after merger that *inter se* seniority list was published on 26.02.2005 in the cadre of Assistant Director and Petitioner instead of rushing to the Court gave a representation immediately on 02.03.2005 followed by another representation on 24.09.2008 seeking refixation and restoration of his seniority. Petitioner thereafter represented through the in-house mechanism including approaching the GRC and his representation dated 11.06.2015 was disposed of by LSS on 20.07.2015 stating that the matter was pending before the GRC. As no response was being received, Petitioner filed an RTI application on 17.06.2016 and along with reply dated 01.07.2016 relevant documents were supplied including Minutes of the Meeting of GRC dated 04.01.2016 from where it was learnt that officers concerned had accepted that Petitioner was from a senior panel and his case be referred to DoPT for further action. After being promoted as a Director in December, 2017 Petitioner sought further information under the RTI Act on 11.09.2018 and from the documents received, it was established that for nearly two years between 2016 to 2018, file notings were favourably disposed towards the Petitioner and things came to a standstill only when the Secretary General, LSS observed that refixation of seniority will entail financial repercussions. It is after this that Petitioner immediately filed a writ petition in 2018 and it cannot be said that the same is barred by delay and laches.

10. Mr. Pramod Gupta, learned counsel appearing for LSS takes a preliminary objection that the writ petition is barred by delay and laches. The relief sought for refixation of *inter se* seniority in the grade of Research Assistant relates to an issue going back to Petitioner's initial appointment in 1988, which is over two decades old and cannot be reopened at this stage.



This exercise would have an adverse effect on the *inter se* seniority of several officers who were granted promotion in the subsequent panels and moreover, no officer whose seniority will be affected has been impleaded as a party in the present writ petition. It is a settled law that long settled seniority cannot be unsettled. Reliance is placed on the judgment of the Supreme Court in *State of Uttaranchal and Another v. Shiv Charan Singh Bhandari and Others*, (2013) 12 SCC 179 and of this Court in *Suraj Pal v. Jamia Hamdard (Hamdard University)*, 2015 SCC OnLine Del 12881 and *Banwari Lal Meena v. Secretary, Lok Sabha Secretariat*, W.P.(C) 16875/2022, decided on 12.12.2022.

11. Without prejudice to the aforesaid contention, it is submitted that on the basis of direct recruitment examination held in 1987, Petitioner was issued offer of appointment to the post of Research Assistant on 05.08.1988. On 25.08.1988, Petitioner sought 03 months extension to join which was acceded to vide letter dated 09.09.1988 with a caveat that according to Rules Petitioner will forfeit his seniority earned on the basis of merit in the panel of selection. Petitioner joined the post of Research Assistant on 25.11.1988 and was confirmed on 17.01.1992. His seniority was affected as a result of late joining and his batchmates Ms. Anita Bhatt and Mr. Stephen Abraham were placed above him, a position Petitioner never contested.

12. It is urged that on 21.04.1995, two separate streams, i.e., Research Assistant and Reference Assistant were merged after approval by the Speaker of the House, which fact has been concealed by the Petitioner. Petitioner was appointed to the post of Executive Officer in officiating capacity vide Notification dated 12.06.1995 and placed in the seniority list at Serial No.14, which was never challenged by him and cannot be at this



belated stage. In 2004, LSS sought to fix the *inter se* seniority in the grade of Assistant Director (LARRDIS) and published a tentative seniority list in which Petitioner was placed at Serial No.13 below the three officers, i.e., Sh. Pulin B. Bhutia, Sh. Harsh Chaturvedi and Smt. Sushma Rungta. Objections were invited from the stakeholders and Petitioner represented on 18.10.2004. On examining the representation of the Petitioner, no merit was found in the same and rejection was communicated to him on 02.03.2005. Final seniority list was issued vide Notification dated 26.02.2005, which was not challenged by the Petitioner for years until this petition and the seniority settled in the year 2005 cannot be now unsettled.

13. There is no legal infirmity in the impugned action of LSS. On merger of different streams of Research Assistants and Reference Assistants, *inter se* seniority was correctly fixed on the basis of their respective dates of initial joining and this was predicated on R&CS Order No.44 dated 09.03.1956, as amended from time to time, which stipulates that seniority of an officer in a cadre in LSS shall be determined from the date of his joining a post in that cadre, whether his appointment is by direct recruitment or promotion or transfer or deputation from Central Service. It further provides that in case of officers appointed to posts in a cadre as a result of competitive examination conducted by LSS, the *inter se* seniority shall be determined on the basis of merit in the examination, if they join duty within one month from the date of offer of appointment and unless the Secretary for good and reasonable grounds otherwise directs, seniority of officers, who join after expiry of one month shall be determined from the date of joining, irrespective of merit in the examination. Paragraph 2(i) of the said Order explains 'Cadre' to mean the strength of a service or a part of a service



sanctioned as a separate unit. Upon merger of Research and Reference streams, a common cadre was formed and in this common cadre, *inter se* seniority was fixed on the basis of dates of joining of the officers concerned. Therefore, vis-à-vis Sh. Pulin B. Bhutia, Sh. Harsh Chaturvedi and Smt. Sushma Rungta, Petitioner can raise no grievance as they joined the post of Reference Assistant on 14.09.1988, 29.09.1988 and 29.09.1988 respectively, prior to the Petitioner, who joined on 25.11.1988. Accordingly, extrapolating their seniority basis the dates of joining LSS, they were correctly placed over the Petitioner.

14. Heard learned counsels for the parties and examined their rival contentions.

15. In view of the preliminary objection raised by learned counsel for LSS, this Court would first decide if the writ petition is barred by delay and laches. Chronology of dates and events indicates that Petitioner was offered appointment for the post of Research Assistant on 05.08.1988 but instead of joining within one month, he joined on 25.11.1988 after he sought and was granted three months extension of joining time. There is no dispute that the extension was granted subject to a caveat that if he joined after one month of the date of issue of offer of appointment, Petitioner will forfeit his seniority earned on the basis of merit in the original panel. As a result of this, Ms. Anita Bhatt and Mr. Stephen Abraham, who were lower in merit stole a march in seniority. This position, crystallized in 1992 was never contested by the Petitioner and rightly so. In fact, Mr. Saini fairly and candidly submits that even in the present petition there is no challenge to the seniority of these two officers.



16. Moving forward, on 21.04.1995 two separate streams of Research Assistants and Reference Assistants were merged with the approval of the Speaker, LSS and as a consequence a combined list was drawn up by LSS which included the name of the Petitioner at Serial No.15, while 3 other officers belonging to the Reference Assistant Stream, namely Sh. Pulin B. Bhutia, Sh. Harsh Chaturvedi and Smt. Sushma Rungta, were placed at Serial Nos.12, 13 and 14, respectively. Mr. Gupta terms this list as a combined seniority list but is unable to respond whether this list was circulated and preceded by a tentative seniority inviting objections from the concerned officers. There is nothing on record to establish that this list can be treated as a Seniority List in consonance with law.

17. Be that as it may, Petitioner was appointed to the post of Executive Officer in an officiating capacity from 09.06.1995 to 31.12.1995 vide Notification dated 12.06.1995. The officiating period was subsequently extended till further orders. Till this point, Petitioner has no road block. His problem with respect to delay and laches begins from hereon. On 14.10.2004, a draft *inter se* seniority list in the grade of Assistant Director (LARRDIS) was circulated by LSS in which admittedly Petitioner was at Serial No.13 and below the aforementioned three officers. Comments/objections were invited against the draft/tentative seniority list by 21.10.2004. Petitioner objected and gave a representation, which was examined but his request for refixing the seniority was not accepted and this fact was communicated to the Petitioner on 02.03.2005.

18. As a matter of record, final seniority list was issued in the grade of Assistant Director vide Notification dated 26.02.2005 in terms of R&CS Order dated 20.12.2003 and Petitioner was placed at Serial No.12, i.e.,



below Sh. Pulin B. Bhutia, Sh. Harsh Chaturvedi and Smt. Sushma Rungta. Admittedly, Petitioner never challenged this seniority list or the memorandum dated 02.03.2005, rejecting his objections against the seniority list. The seniority position flowing from this seniority list is indirectly challenged in the present petition after 13 years but even now there is no challenge to the seniority list or the memorandum.

19. The moot question is whether a writ petition filed in 2018 challenging a seniority position finalized in 2005 can be entertained and the delay of 13 years can be glossed over and in my view, the answer is a clear 'No'. Be it noted that even now there is no challenge to the seniority list published on 26.02.2005. It needs no reiteration that it is a settled law that long settled seniority should not be unsettled and the doctrine of delay and laches applies with greater vigor to matters relating to seniority and promotion as this has an adverse impact on third parties, who in the meantime have moved up the ladder in seniority and/or promoted. In one of the earliest decisions in ***R.S. Makashi and Others v. I.M. Menon and Others, (1982) 1 SCC 379***, the Supreme Court observed as follows:

“30. In these circumstances, we consider that the High Court was wrong in overruling 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, 1968 ought to have been rejected by the High Court on the ground of delay and laches and the writ petition insofar as it related to the prayer for quashing the said Government Resolution should have been dismissed.”



20. In **Malcom Lawrence Cecil D'Souza v. Union of India and Others**, (1976) 1 SCC 599, the Supreme Court held as follows:

“9. Although security of service cannot be used as a shield against administrative action for lapses 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 no 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.”

21. In **Shiba Shankar Mohapatra and Others v. State of Orissa and Others**, (2010) 12 SCC 471, the Supreme Court referred to several earlier decisions on the issue of entertaining the petition disputing long settled seniority and the principles that emerge are that once the seniority has been fixed and remains in existence for a reasonable time, any challenge to the same should not be entertained. Fence-sitters cannot be allowed to raise a dispute or challenge at a belated stage. Claim for seniority at a belated stage should be rejected as it seeks to disturb the vested rights of other persons in respect of seniority, rank and promotion, which have accrued to them during the intervening period. Courts exercising public law jurisdiction should not encourage agitation of stale claims where rights of third party crystallise in the interregnum. Relevant paragraphs are as follows:

“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 [(1974) 1 SCC 317 : 1974 SCC (L&S) 137] 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. A party should approach the court just after accrual of the cause of complaint. While deciding the said case, this Court placed reliance upon its earlier judgments, particularly in *Tilokchand Motichand v. H.B. Munshi* [(1969) 1 SCC 110] , wherein it has been observed that the principle on which the court proceeds in refusing relief to the petitioner on the ground of laches or delay, is that the rights, which have accrued to others by reason of delay in filing the writ petition should not be allowed to be disturbed unless there is a reasonable explanation for delay. The Court further observed as under : (*Tilokchand case* [(1969) 1 SCC 110] , SCC p. 115, para 7)

“7. ... The party claiming fundamental rights must move the Court before other rights come into existence. The action of courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court.”

19. This Court in *Ramchandra Shankar Deodhar case* [(1974) 1 SCC 317 : 1974 SCC (L&S) 137] also placed reliance upon its earlier judgment of the Constitution Bench in *Rabindranath Bose v. Union of India* [(1970) 1 SCC 84] , wherein it has been observed as under : (*Rabindranath Bose case* [(1970) 1 SCC 84] , SCC p. 97, para 33)

“33. ... It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years.”

20. In *R.S. Makashi v. I.M. Menon* [(1982) 1 SCC 379 : 1982 SCC (L&S) 77] this Court considered all aspects of limitation, delay and laches in filing the writ petition in respect of inter se seniority of the employees. The Court referred to its earlier judgment in *State of M.P. v. Bhailal Bhai* [AIR 1964 SC 1006] , wherein it has been observed that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought, may ordinarily be taken to be a reasonable standard by which delay in seeking the remedy under Article 226 of the Constitution can be measured. The Court observed as under : (*R.S. Makashi case* [(1982) 1 SCC 379 : 1982 SCC (L&S) 77] , SCC pp. 398-400, paras 28 & 30)

“28. ... ‘33. ... we must administer justice in accordance with law and principles of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years. ...’ [Ed. : As observed in *Rabindranath Bose v. Union of India*, (1970) 1 SCC 84, p. 97, para 33.]



30. ... The petitioners have not furnished any valid explanation whatever for the inordinate delay on their part in approaching the court with the challenge against the seniority principles laid down in the Government Resolution of 1968. ... We would accordingly hold that the challenge raised by the petitioners against the seniority principles laid down in the Government Resolution of 22-3-1968 ought to have been rejected by the High Court on the ground of delay and laches and the writ petition insofar as it related to the prayer for quashing the said Government Resolution should have been dismissed.”

21. 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 v. R.P. Singh* [(1986) 4 SCC 531 : 1987 SCC (L&S) 6 : AIR 1986 SC 2086]. The Court held as under : (SCC pp. 532 & 536, paras 2 & 7)

“2. ... A government servant who is appointed to any post ordinarily should at least after a period of 3 or 4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity. ...

7. ... Satisfactory service conditions postulate that there should 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 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. ... 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)

22. While deciding *K.R. Mudgal* case [(1986) 4 SCC 531 : 1987 SCC (L&S) 6 : AIR 1986 SC 2086], this Court placed reliance upon its earlier judgment in *Malcom Lawrence Cecil D'Souza v. Union of India* [(1976) 1 SCC 599 : 1976 SCC (L&S) 115 : AIR 1975 SC 1269], wherein it had been observed as under : (*Cecil D'Souza* case [(1976) 1 SCC 599 : 1976 SCC (L&S) 115 : AIR 1975 SC 1269], SCC p. 602, para 9)

“9. Although security of service cannot be used as a shield against administrative action for lapses 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 no 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.”

(emphasis added)

23. *In B.S. Bajwa v. State of Punjab [(1998) 2 SCC 523 : 1998 SCC (L&S) 611] this Court while deciding the similar issue reiterated the same view, observing as under : (SCC p. 526, para 7)*

“7. ... It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition.”

(emphasis added)

24. *In Dayaram A. Gursahani v. State of Maharashtra [(1984) 3 SCC 36 : 1984 SCC (L&S) 341] , while reiterating the similar view this Court held that in absence of satisfactory explanation for inordinate delay of 8-9 years in questioning under Article 226 of the Constitution, the validity of the seniority and promotion assigned to other employee could not be entertained.*

25. *In P.S. Sadasivaswamy v. State of T.N. [(1975) 1 SCC 152 : 1975 SCC (L&S) 22] this Court considered the case where the petition was filed after a lapse of fourteen years challenging the promotion. However, this Court held that the aggrieved person must approach the Court expeditiously for relief and it is not permissible to put forward stale claim. The Court observed as under : (SCC p. 154, para 2)*

“2. ... A person aggrieved by an order promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion.”

The Court further observed that it was not that there was any period of limitation for the courts to exercise their powers under Article 226 nor was it that there could never be a case where the courts cannot interfere in a matter after certain length of time. It would be a sound and wise exercise of jurisdiction for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the court to put forward stale claim and try to unsettle settled matters.

26. *A similar view has been reiterated by this Court in Sudama*



Devi v. Commr. [(1983) 2 SCC 1] ; *State of U.P. v. Raj Bahadur Singh* [(1998) 8 SCC 685 : 1999 SCC (L&S) 252] and *Northern Indian Glass Industries v. Jaswant Singh* [(2003) 1 SCC 335] .

27. In *Dinkar Anna Patil v. State of Maharashtra* [(1999) 1 SCC 354 : 1999 SCC (L&S) 216] this Court held that delay and laches in challenging the seniority is always fatal, but in case the party satisfies the Court regarding delay, the case may be considered.

28. In *K.A. Abdul Majeed v. State of Kerala* [(2001) 6 SCC 292 : 2000 SCC (L&S) 955] this Court held that seniority assigned to any employee could not be challenged after a lapse of seven years on the ground that his initial appointment had been irregular, though even on merit it was found that seniority of the petitioner therein had correctly been fixed.

29. It is settled law that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion. No party can claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the court is guilty of delay and the laches. The court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallises in the interregnum. (*Vide Aflatoon v. Lt. Governor of Delhi* [(1975) 4 SCC 285 : AIR 1974 SC 2077] ; *State of Mysore v. V.K. Kangan* [(1976) 2 SCC 895 : AIR 1975 SC 2190] ; *Municipal Council, Ahmednagar v. Shah Hyder Beig* [(2000) 2 SCC 48] ; *Inderjit Gupta v. Union of India* [(2001) 6 SCC 637 : 2001 SCC (L&S) 1083] ; *Shiv Dass v. Union of India* [(2007) 9 SCC 274 : (2007) 2 SCC (L&S) 395] ; *A.P. SRTC v. N. Satyanarayana* [(2008) 1 SCC 210 : (2008) 1 SCC (L&S) 161] and *City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla* [(2009) 1 SCC 168]).

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. In ***H.S. Vankani and Others v. State of Gujarat and Others*, (2010) 4 SCC 301**, the Supreme Court held as follows:

“38. Seniority is a civil right which has an important and vital role to play in one's service career. Future promotion of a government servant depends either on strict seniority or on the basis of seniority-cum-merit



or merit-cum-seniority, etc. Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instils 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 a 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 the 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 a lot of judicial time from the lowest court to the highest resulting in constant bitterness among the parties at the cost of sound administration affecting public interest.

39. 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 v. S.K. Goel [(2007) 14 SCC 641 : (2009) 1 SCC (L&S) 873] , T.R. Kapoor v. State of Haryana [(1989) 4 SCC 71 : 1989 SCC (L&S) 636 : (1989) 11 ATC 844] and Bimlesh Tanwar v. State of Haryana [(2003) 5 SCC 604 : 2003 SCC (L&S) 737] . In view of the settled law the decisions cited by the appellants in G.P. Doval case [(1984) 4 SCC 329 : 1984 SCC (L&S) 767] , Prabhakar case [(1976) 2 SCC 890 : 1976 SCC (L&S) 367] , G. Deendayalan [(1997) 2 SCC 638 : 1997 SCC (L&S) 749] and R.S. Ajara [(1997) 3 SCC 641 : 1997 SCC (L&S) 851] are not applicable to the facts of the case.”

23. In ***Shiv Charan Singh Bhandari (supra)***, the Supreme Court was examining whether a claim petition filed before the Tribunal after a lapse of several years challenging the *ad-hoc* promotion of a junior employee could be entertained, when the Appellants could have assailed the same immediately after the *ad-hoc* promotion was conferred, but chose not to do so for 6 years till regular promotion took place. The only defence of the



Appellants for approaching the Court belatedly was that they were making representations. The Supreme Court dismissed the appeals invoking the doctrine of delay and laches observing that there can be no cavil over the fact that claim for promotion is based on concept of equality and the relief must be claimed within a reasonable time and even if a person has a case on merit, seniority should not be disturbed at the instance of one who sleeps over his right. Relevant passages are as follows:

“17. In C. Jacob v. Director of Geology and Mining [C. Jacob v. Director of Geology and Mining, (2008) 10 SCC 115 : (2008) 2 SCC (L&S) 961] a two-Judge Bench was dealing with the concept of representations and the directions issued by the court or tribunal to consider the representations and the challenge to the said rejection thereafter. In that context, the Court has expressed thus: (SCC p. 123, para 10)

“10. Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.”

18. In Union of India v. M.K. Sarkar [(2010) 2 SCC 59 : (2010) 1 SCC (L&S) 1126] this Court after referring to C. Jacob [C. Jacob v. Director of Geology and Mining, (2008) 10 SCC 115 : (2008) 2 SCC (L&S) 961] has ruled that: (SCC p. 66, para 15)

“15. When a belated representation in regard to a ‘stale’ or ‘dead’ issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the ‘dead’ issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.”

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.

20. *In Karnataka Power Corpn. Ltd. v. K. Thangappan [(2006) 4 SCC 322 : 2006 SCC (L&S) 791] the Court took note of the factual position and laid down that when nearly for two decades the respondent workmen therein had remained silent mere making of representations could not justify a belated approach.*

21. *In State of Orissa v. Pyarimohan Samantaray [(1977) 3 SCC 396 : 1977 SCC (L&S) 424] it has been opined that making of repeated representations is not a satisfactory explanation of delay. The said principle was reiterated in State of Orissa v. Arun Kumar Patnaik [(1976) 3 SCC 579 : 1976 SCC (L&S) 468].*

22. *In BSNL v. Ghanshyam Dass (2) [(2011) 4 SCC 374 : (2011) 2 SCC (Civ) 268 : (2011) 1 SCC (L&S) 685] a three-Judge Bench of this Court reiterated the principle stated in Jagdish Lal v. State of Haryana [(1997) 6 SCC 538 : 1997 SCC (L&S) 1550] and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the Tribunal in 1997, they would not get the benefit of the order dated 7-7-1992 [Santosh Kapoor v. Union of India, OA No. 1455 of 1991, order dated 7-7-1992 (CAT)].*

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 [(2009) 15 SCC 321 : (2010) 1 SCC (L&S) 539].*

25. *In NDMC v. Pan Singh [(2007) 9 SCC 278 : (2007) 2 SCC (L&S) 398] the Court has opined that though there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, yet*



ordinarily a writ petition should be filed within a reasonable time. In the said case the respondents had filed the writ petition after seventeen years and the court, as stated earlier, took note of the delay and laches as relevant factors and set aside the order passed by the High Court which had exercised the discretionary jurisdiction.

26. Presently, sitting in a time machine, we may refer to a two-Judge Bench decision in P.S. Sadasivaswamy v. State of T.N. [(1975) 1 SCC 152 : 1975 SCC (L&S) 22] , wherein it has been laid down that: (SCC p. 154, para 2)

“2. ... A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the courts to exercise their powers under Article 226 nor is it that there can never be a case where the courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters.”

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.

28. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the Tribunal and accepted by the High Court.”

24. I may also profitably refer to the judgment of the Supreme Court in *Dr. Akshya Bisoi and Another v. All Institute of Medical Sciences and Others*, (2018) 3 SCC 391, as under:



“19. The Court is confronted in the present case with a situation in which recruitment to the post of Additional Professor was carried out in 2005. That was well over 12 years ago. The petitioners have instituted these proceedings under Article 32 in November 2017 to question the order of ranking made by the Selection Committee on 12-9-2005. There is no cogent explanation for this belated recourse to legal remedies. The petitioners cannot legitimately explain the delay on their part merely by contending that they were representing to the first respondent to remedy their grievances. The petitioners may have believed in good faith that the Aiiims administration would pay heed to their grievances. They had a sympathetic ear of the Union Ministry of Health and Family Welfare. But twelve years is too long a period, by any means, to not seek recourse to judicial remedies. As the narration of facts would indicate, the governing body had on 14-4-2012 decided to maintain the order of merit in terms of which the fourth respondent was ranked first, above the two petitioners. Even thereafter, a three-member committee was constituted by the governing body in October 2012 and a decision was once again taken on 19-7-2013 to maintain the order of seniority. This was reiterated on 12-5-2014 and 22-6-2016. The petitioners were thus aware of the consistent position which was adopted by the first respondent. The delay on their part in seeking recourse to their legal remedies must weigh against them. At this stage it would be manifestly unfair to unsettle the inter se seniority between the three Professors in the CTVS Department by reopening the recommendation made by the Selection Committee in 2005.

20. In holding that an unexpected delay on the part of the petitioners would disentitle them to relief, we place reliance on a judgment of this Court in State of Uttaranchal v. Shiv Charan Singh Bhandari [State of Uttaranchal v. Shiv Charan Singh Bhandari, (2013) 12 SCC 179 : (2014) 3 SCC (L&S) 32]. The learned Chief Justice, after adverting to the settled position of law in that regard, observed thus : (SCC pp. 185-86, paras 27-28)

“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. ... 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. ...

28. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been



entertained by the Tribunal and accepted by the High Court.”

There has to be an element of repose and a stale claim cannot be resuscitated.

x x x x x x x x x

24. In the present case, the record of the court indicates that while making its recommendations for appointment to the post of Additional Professor, the Selection Committee had borne in mind the performance of the candidates, their records as well as the opinion of the technical experts. The minutes of the meeting of 12-9-2005 indicate that the views of the technical experts were considered. To re-evaluate what took place well over twelve years ago would neither be feasible nor appropriate. The policy decision of 1997 indicates that the gradings given by all the members of the Selection Committee and the technical experts are to be placed before the Chairman of the Selection Committee and the final selection “may be made” on the basis of the gradings/markings given by the members of the Selection Committee and the technical experts. The Selection Committee which was constituted in 2005 considered the issue of selection and inter se ranking of the selected candidates. In making its final recommendation in regard to their order of merit, upon appointment as Additional Professors, the Selection Committee had due regard to relevant matters including the performance of the candidates, their records and the opinion of the experts. Hence, the ranking which has been assigned cannot be regarded as being in breach of the policy decision of 1997. It would be iniquitous to unsettle the position of seniority, over twelve years after the petitioners and the fourth respondent were selected as Additional Professors. Even thereafter, when each of them has been promoted as a Professor, it is the fourth respondent who has been ranked higher than the petitioners.

25. For the above reasons, we have come to the conclusion that the grant of relief would unsettle the inter se seniority between the petitioners and the fourth respondent well over twelve years since the recommendation of the Selection Committee for appointment as Additional Professors. This cannot be done. Some expressions of opinion in favour of the first petitioner in the departmental processes may have engendered a sense of hope. But that cannot furnish a legal ground to unsettle something that has held the field for long years. We close the proceedings with the expectation that these distinguished doctors will pursue their avocations at Aiims without rancour. Our decision on seniority is no reflection upon their distinguished service to a premier national institution.”

25. This position of law has been recently restated and reinforced by the Supreme Court in *Ajay Kumar Shukla and Others v. Arvind Rai and Others*, (2022) 12 SCC 579, and relevant passages are as follows:



“24. 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 Shiba Shankar Mohapatra v. State of Orissa [Shiba Shankar Mohapatra v. State of Orissa, (2010) 12 SCC 471 : (2011) 1 SCC (L&S) 229] . 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 [Ed. : The reference appears to be to Ramchandra Shankar Deodhar v. State of Maharashtra, (1974) 1 SCC 317 : 1974 SCC (L&S) 137 and Tilokchand Motichand v. H.B. Munshi, (1969) 1 SCC 110] and ultimately in para 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 para 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. Para 30 is reproduced below : (SCC pp. 483-84)

“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 [K.R. Mudgal v. R.P. Singh, (1986) 4 SCC 531 : 1987 SCC (L&S) 6] , 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.”

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

(i) Dayaram Asanand Gursahani v. State of Maharashtra [Dayaram Asanand Gursahani v. State of Maharashtra, (1984) 3 SCC 36 : 1984 SCC (L&S) 341]

(ii) B.S. Bajwa v. State of Punjab [B.S. Bajwa v. State of Punjab, (1998) 2 SCC 523 : 1998 SCC (L&S) 611]

(iii) Malcom Lawrence Cecil D'Souza v. Union of India [Malcom Lawrence Cecil D'Souza v. Union of India, (1976) 1 SCC 599 : 1976 SCC (L&S) 115]

(iv) R.S. Makashi v. I.M. Menon [R.S. Makashi v. I.M. Menon, (1982) 1 SCC 379 : 1982 SCC (L&S) 77]

26. In Dayaram A. Gursahani [Dayaram Asanand Gursahani v. State of Maharashtra, (1984) 3 SCC 36 : 1984 SCC (L&S) 341] , there was a



delay of 9 years. In B.S. Bajwa [B.S. Bajwa v. State of Punjab, (1998) 2 SCC 523 : 1998 SCC (L&S) 611] , there was a delay of more than a decade. In Malcom Lawrence Cecil D'Souza [Malcom Lawrence Cecil D'Souza v. Union of India, (1976) 1 SCC 599 : 1976 SCC (L&S) 115] , the delay was of 15 years and in R.S. Makashi [R.S. Makashi v. I.M. Menon, (1982) 1 SCC 379 : 1982 SCC (L&S) 77] 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 [Shiba Shankar Mohapatra v. State of Orissa, (2010) 12 SCC 471 : (2011) 1 SCC (L&S) 229] 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 beyond the aforesaid period would require satisfactory explanation.”

26. The common thread that runs in all the aforementioned judgments is that settled seniority should not be reopened or disturbed and unsettled after a lapse of unreasonable period of time, as unsettling a long existing seniority at the instance of one or some employees has an adverse impact on the vested rights accrued in favour of others in the meantime. This law has developed on a sound rationale and first principles of entertaining a writ petition which is a discretionary relief that those who sit back and sleep over their rights cannot be given a premium for waking up from a deep slumber after years and be allowed to assert better rights of seniority over the others. It is settled that law comes to the rescue of the vigilant and not the indolent.

27. With these principles in the backdrop, I may now examine the centripetal issue whether the writ petition is barred by delay and laches. There is no trace of doubt that Petitioner challenges a seniority list published on 26.02.2005, which he could have challenged immediately when the same was published or at least when the memorandum of rejection of his representation against draft seniority list was communicated to him on 02.03.2005. Petitioner chose not to follow the said path for years. The only shield and defence that the Petitioner sets up is that his matter was under consideration with the GRC and with favourable recommendations in the



file notings, he was hopeful of a positive outcome and that he had been representing from time to time. In *Shiv Charan Singh Bhandari (supra)*, the Supreme Court repelled the argument that making representations would extend limitation and/or serve as a defence to delay and laches. It was observed that the issue of limitation or delay and laches has to be considered with reference to original cause of action and even where the Court directs consideration of a representation relating to a stale or dead claim, it does not give rise to a fresh cause of action. Making repeated representations is not a satisfactory explanation of delay and if one chooses to sleep like Rip Van Winkle and gets up from the slumber at his own leisure for some reason which is fathomable to him, the reasoning cannot be countenanced in law.

28. Petitioner has not rendered any plausible explanation for delay in challenging an event of 2005 in the year 2018 and in my view, the petition cannot be entertained at this belated stage to unsettle a seniority position settled in 2005, only because the Petitioner chose to wake up from his deep slumber in 2018. Mr. Saini repeatedly urged that even if his seniority is refixed from 2005, it will have no financial repercussion and no prejudice will be caused to anyone. Both these arguments cannot be accepted. It goes without saying that if the seniority of the Petitioner is refixed from 2005 and he is placed above the three officers mentioned above in the list published on 26.02.2005, the natural consequence will be that seniority position of at least 2 out of the 3 officers will be disturbed with a resultant impact on the promotions earned by them in the meantime to the grades of Assistant Director and Joint Director, which cannot be permitted and countenanced in law. Even on financial impact, Petitioner is not correct. If the seniority is ante-dated, consequential promotions, which are naturally in the higher pay



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scale will have to be reviewed and possibly ante-dated resulting in higher pay scales from dates earlier than those currently given to the Petitioner. Therefore, in my view, Mr. Gupta is right in urging that the present writ petition is barred by delay and laches and deserves to be dismissed on this ground alone.

29. This apart, even on merits, Petitioner has no case. The rule position incorporated in R&CS Order No.44 dated 09.03.1956 provides that seniority of an officer in a cadre in LSS shall be determined from the date of joining the post in that cadre and 'cadre' has been defined to mean the strength of service or a part of a service sanctioned as a separate unit. With the merging of Research and Reference streams, a cadre was formed and *inter se* seniority has to be fixed on the respective dates of joining of the officers coming from different streams. There is no challenge to this Office Order. Indisputably, Petitioner joined LSS on 25.11.1988 while Sh. Pulin B. Bhutia joined on 14.09.1988 and Sh. Harsh Chaturvedi and Smt. Sushma Rungta both joined on 29.09.1988 i.e., prior to the Petitioner and their seniority was rightly fixed above the Petitioner. Therefore, on this score also, Petitioner has no case.

30. Writ petition is accordingly dismissed along with the pending application, for all the aforesaid reasons.

JYOTI SINGH, J

AUGUST 06, 2024

B.S. Rohella