VED PRAKASH DEWANGAN

Digitally signed by VED PRAKASH DEWANGAN
Date: 2026.10.06 17:08:37 +0530

CGHC010026782016 2026:CGHC:43308

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 5246 of 2016

Reserved for orders on 02/09/2026

Order delivered on 06/10/2026

Brijesh Kumar Patoria S/o Late Shri K. L. Patoria, Aged About 50 Years R/o Office Of The Executive Engineer, Public Works Department, National Highway Division, Ambikapur, District Sarguja Chhattisgarh, Chhattisgarh

... Petitioner

versus

1 - State Of Chhattisgarh Through The Principal Secretary, Public Works Department, Mantralaya, Mahanadi Bhawan New Raipur, District Raipur Chhattisgarh, Chhattisgarh

2 - The Engineer In Chief, Office Of Engineer In Chief Sirpur Bhawan Raipur District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

3 - Ramavatar Diwakar R/o S.D.O. Bagicha, Public Works Department, Sub Division, District Jashpur Chhattisgarh, District : Jashpur, Chhattisgarh

---Respondents

(Cause title taken from Case Information System)

For Petitioner	:	Mr. Manoj Paranjpe, Senior Advocate along with Mr. Arpan Verma, Advocate
For Respondents No.1 and 2/State	:	Mr. Ghanshyam Kashyap, Deputy G.A.
For Respondent No.3	:	Ms. Surya Kawalkar Dangi, Advocate
For Intervenors	:	Ms. Anju Verma, Advocate on behalf of Mr. Jitendra Pali, Advocate

Hon'ble Shri Ravindra Kumar Agrawal, Judge

C.A.V. Order

1. The petitioner has preferred the present writ petition challenging the order dated 15.07.2016 (Annexure P-1), whereby the seniority of the petitioner has been altered, as well as the consequential order dated 09.12.2015 (Annexure P-2), by which the petitioner's seniority was initially revised. The petitioner has assailed the aforesaid orders on the ground that the alteration of his seniority is contrary to the applicable service rules and has adversely affected his service rights and has prayed for the following reliefs:-

> "Petitioner pray that this Hon'ble Court may kindly be pleased to:
>
> 10.1 To issue suitable writ / directions for setting a side order dated 15.7.2016 i.e P-1 and order dated 09.12.2015 P-2.
>
> 10.2 To grant any other relief(s)/ order(s)/ direction(s) in favour of petitioner, which may deem fit and proper in the facts and circumstances of the case, in the interest of justice."

2. The case of the petitioner, in brief, is that the petitioner was initially appointed to the post of Sub Engineer by the erstwhile State of Madhya Pradesh in the year 1993. He thereafter served as Sub Engineer in various districts and, immediately before the reorganisation of the State of Madhya Pradesh, was posted in District Jagdalpur, which subsequently fell within the territorial jurisdiction of the State of Chhattisgarh. At the time of reorganisation, the petitioner

opted for allocation to the State of Chhattisgarh; however, by final allocation order dated 09.09.2002, he was allocated to the State of Madhya Pradesh. Aggrieved thereby, the petitioner preferred WP No. 2486/2002 before this Court and also submitted an application dated 16.10.2002 seeking mutual allocation with one Malay Kumar Shrivastava, who was serving in the State of Madhya Pradesh. The writ petition was disposed of by this Court on 28.04.2003, with the direction that the persons who are not relieved shall not be relieved and shall be allowed to continue at their place of posting till the decision of the Central Government, and the person who has been relieved shall make a representation to the Central Government and the Central Government shall take a decision on those representations as it deems fit. Whereafter, pursuant to the policy of the Government of India dated 01.05.2003 concerning mutual exchange, the petitioner's application was considered and, in January 2005, he was finally allocated to the State of Chhattisgarh, whereas Malay Kumar Shrivastava was allocated to the State of Madhya Pradesh.

3. After his allocation to Chhattisgarh, the petitioner was directed to submit a fresh joining by communication dated 11.04.2005. Since his name had earlier been omitted from the gradation list of Sub Engineers of the State of Chhattisgarh on account of his allocation to Madhya Pradesh, the petitioner represented for restoration of his seniority commensurate with the service rendered by him. By order dated 12.07.2005, he was placed at Serial No. 479-A in the gradation list, and his seniority was fixed with effect from 01.04.2003. The

petitioner thereafter represented that his seniority ought to have been reckoned from 01.11.2002, pursuant to which his seniority was subsequently re-fixed by the competent authority. The petitioner was thereafter considered by the Departmental Promotion Committee and was promoted to the post of Assistant Engineer by order dated 01.03.2007, with his promotion year indicated as 2003. Having completed the requisite period of service, he was further promoted to the post of Executive Engineer by order dated 19.09.2008. It is the further case of the petitioner that respondent No. 3 subsequently raised an objection regarding fixation of his seniority, contending that the same was not in conformity with the circular dated 29.04.2005 issued by the State of Madhya Pradesh. Acting upon the said representation, respondent No. 1 passed an order dated 23.03.2013, whereby the petitioner's seniority was re-fixed and he was placed at Sr. No. 515-A, i.e. the bottom of his original cadre in the year 1993 when he was appointed and above the appointees of the year 1994 of the said cadre. The petitioner challenged the said action by submitting a representation dated 07.09.2013; however, while the said grievance was pending consideration, an amended order dated 09.12.2015 (Annexure P-2) was issued, whereby his seniority was again re-fixed and he was placed lower in the gradation list. The said alteration of seniority had a direct bearing upon the promotions already granted to him and his consequential service benefits.

4. On the basis of the order dated 09.12.2015, the respondents proceeded to convene a review DPC without giving him any prior intimation or opportunity to place his case before the Committee. The

petitioner came to know of the proposed review DPC only upon receipt of the communication dated 20.04.2016 (Annexure P-16) and thereafter submitted a representation dated 05.05.2016 (Annexure P-17), objecting to the proposed action and requesting consideration of his claim. The said representation was not duly considered and, accepting the recommendations of the review DPC, respondent No. 1 passed the order dated 15.07.2016 (Annexure P-1), whereby the petitioner's placement as on 01.04.2004 is deleted, and his promotion on the post of Assistant Engineer is considered from 2008 instead of 2003, and he is placed in the gradation list accordingly, thereby the petitioner’s seniority was adversely affected. The petitioner has, therefore, challenged the orders dated 09.12.2015 and 15.07.2016, on the ground that the subsequent re-fixation of his seniority, after his earlier seniority had been acted upon for promotion to the posts of Assistant Engineer and Executive Engineer, was contrary to the applicable rules and principles governing allocation and seniority, and that the review DPC was convened and acted upon without affording him an effective opportunity of hearing.

5. The further case of the petitioner in rejoinder is that the objections raised by the respondents regarding maintainability and non-challenge to the circulars dated 29.04.2005 and 20.05.2005 are misconceived. The petitioner is not challenging the said policies in the abstract, but only the manner in which the respondents have applied them to his peculiar case, resulting in disturbance of his seniority after the same had remained settled and had been acted upon for several years. The petitioner had continuously served within

the territory of the present State of Chhattisgarh, his seniority was duly fixed by the competent authority, and on the basis thereof he was promoted first as Assistant Engineer and thereafter as Executive Engineer. The respondents cannot, after permitting him to continue on the promotional post for a considerable period, retrospectively alter his seniority and disturb the consequential service benefits. His case is materially different from that of an employee seeking ordinary mutual transfer, as his service in the territory of Chhattisgarh commenced even prior to the reorganisation of the State and his subsequent allocation was pursuant to the mutual allocation process undertaken by the competent authorities. The impugned order dated 09.12.2015 and the consequential order dated 15.07.2016 have caused actual prejudice to him, culminating in his reversion from the post of Executive Engineer. No adequate justification or material has been produced by the respondents for disturbing the petitioner's long-settled seniority after several years, particularly when his earlier seniority had already been accepted and acted upon for granting successive promotions. The petitioner also reiterates that the Review DPC was convened without affording him prior notice or effective opportunity to represent his case and that his representation dated 05.05.2016 was not duly considered before accepting the recommendations of the Review DPC.

6. The stand of the State/respondent is that after reorganisation of the erstwhile State of Madhya Pradesh, the petitioner, though having opted for allocation to Chhattisgarh, was finally allocated to the State of Madhya Pradesh by order dated 09.09.2002 and was accordingly

relieved by the Engineer-in-Chief, Public Works Department, Chhattisgarh, on 18.10.2002. The petitioner challenged the said allocation before this Court in W.P. No. 2486/2002 and, during pendency of the proceedings, continued in Chhattisgarh pursuant to interim protection. Subsequently, the petitioner sought mutual allocation with Shri Malay Kumar Shrivastava and, pursuant to the policy of the Government of India dated 01.05.2003 and the order passed by this Court, he was re-allocated to the State of Chhattisgarh. According to the respondents, such re-allocation being on the basis of mutual allocation, the petitioner's seniority was required to be regulated in terms of Clause 9 of the circular dated 29.04.2005, under which an employee coming to the State by way of mutual allocation is required to be placed at the bottom of the relevant gradation list. It is submitted that the petitioner's seniority had initially been fixed incorrectly and, on a representation made by respondent No.3, the same was corrected by order dated 23.03.2013. The petitioner did not challenge the said order by instituting any independent proceeding and, therefore, according to the respondents, it attained finality. In terms of the aforesaid policy, the petitioner's seniority was again correctly re-fixed by order dated 09.12.2015, placing him at the appropriate position in the gradation list, and thereafter a Review DPC was convened. It is contended that the petitioner had been granted promotion to the post of Assistant Engineer and subsequently to the post of Executive Engineer on the basis of an erroneous fixation of seniority, and therefore the competent authority was entitled to rectify the illegality and take consequential action. The respondents dispute the petitioner's

contention that the circular dated 29.04.2005 was being given retrospective effect, and submit that the circular merely prescribed the manner in which seniority was to be determined in cases of mutual allocation. According to the State, the petitioner, having entered the Chhattisgarh cadre through mutual allocation, could not claim seniority over employees already borne in the cadre contrary to the governing policy. It is, therefore, contended that the orders dated 09.12.2015 and 15.07.2016 have been passed in accordance with Clause 9 of the circular dated 29.04.2005 and the applicable policy, and that no illegality or arbitrariness is involved in re-fixation of the petitioner's seniority or in the consequential review of his promotion. On these grounds, the State submits that the writ petition is devoid of merit and deserves to be dismissed.

7. The Respondent No. 3 contested the claim of the petitioner and filed his return and pleaded that the writ petition is not maintainable as the petitioner has challenged only the consequential orders re-fixing his seniority, without assailing the rules/policies dated 29.04.2005 and 20.05.2005 governing mutual transfer/mutual allocation between the successor States of Madhya Pradesh and Chhattisgarh. It is averred that the petitioner was originally allocated to the State of Madhya Pradesh and entered the Chhattisgarh cadre only subsequently pursuant to mutual allocation on his own request. The original allocation under the State Reorganisation Act stands on a different footing from subsequent mutual transfer, which is based upon the employee's request, consent and administrative approval. Having accepted the benefit of mutual allocation and having voluntarily

entered the Chhattisgarh cadre, the petitioner cannot claim the further benefit of carrying his earlier seniority in Madhya Pradesh in a manner prejudicial to employees who were already borne on the Chhattisgarh cadre. The petitioner, therefore, cannot accept the beneficial part of the mutual allocation while avoiding the service consequences attached thereto.

8. The Respondent No.3 further contended that the mutual transfer policy was intended to maintain cadre stability and protect the seniority of employees already serving in the transferee State. Permitting the petitioner to retain his earlier Madhya Pradesh seniority would adversely affect the settled position of employees already serving in Chhattisgarh and defeat the object of the governing policy. The plea that the circular/rules dated 29.04.2005 could operate only prospectively is also disputed, on the ground that the rules merely regulated the service consequences of mutual allocation and did not retrospectively impose any liability or penalty upon the petitioner. The petitioner had no vested right to carry his earlier seniority into the Chhattisgarh cadre to the detriment of existing employees, and an earlier erroneous fixation of seniority could not confer an indefeasible right upon him. The impugned orders merely corrected the petitioner's seniority in accordance with the applicable rules and policies and, as the rules themselves have not been challenged, the writ petition is liable to be dismissed.

9. Mr. Manoj Paranjpe, learned Senior Advocate, appearing for the petitioner, would submit that the petitioner was appointed as Sub-Engineer in the erstwhile State of Madhya Pradesh in the year 1993

and was serving at Jagdalpur prior to reorganisation of the State. At the time of reorganisation, the petitioner had opted for allocation to the State of Chhattisgarh; however, despite his option, he was initially allocated to the State of Madhya Pradesh by order dated 09.09.2002. The petitioner challenged the said allocation before this Court in W.P. No. 2486/2002 and, during pendency of the proceedings, also submitted an application for mutual allocation with Shri Malay Kumar Shrivastava. Pursuant to the order passed by this Court and the policy of the Government of India, the petitioner's request for mutual allocation was accepted and, in January 2005, he was allocated to the State of Chhattisgarh. Learned counsel would submit that the petitioner's case cannot be treated as that of an employee who, after voluntarily serving in Madhya Pradesh, subsequently sought a transfer to Chhattisgarh, as the petitioner had been serving in the territory which subsequently became part of Chhattisgarh even prior to the reorganisation. He would further submit that after his allocation to Chhattisgarh, the petitioner's seniority was duly considered and was fixed by the competent authority, initially with effect from 01.04.2003 and subsequently, on his representation, with effect from 01.11.2002. The said seniority was acted upon by the Department for several years and, on that basis, the petitioner was granted notional promotion to the post of Assistant Engineer with effect from the year 2003 and was thereafter promoted to the post of Executive Engineer vide order dated 19.09.2008. After permitting the petitioner to discharge duties as Executive Engineer for several years, the respondents could not, based on a subsequent interpretation of the

circular dated 29.04.2005, retrospectively disturb his settled seniority and undo the promotions already granted to him.

10. Learned counsel would particularly submit that the circular dated 29.04.2005 could not be applied retrospectively to an allocation which had already been made in January 2005. The mutual allocation of the petitioner had attained finality before issuance of the said circular, and there is nothing in the circular expressly providing for its retrospective operation. It is argued that administrative instructions ordinarily operate prospectively unless retrospective application is expressly authorised by the competent authority or by the governing statutory provision. The respondents, therefore, could not rely upon Clause 9 of the circular dated 29.04.2005 to retrospectively alter the seniority which had already been fixed and acted upon. Learned counsel would also submit that the subsequent gazette notifications issued by the successor States demonstrate the period and operation of the relevant rules and do not authorise retrospective disturbance of the petitioner's already settled service position.

11. He would next submit that the respondents have failed to appreciate the distinction between the petitioner's original allocation and his subsequent mutual allocation. The petitioner had exercised his option for Chhattisgarh at the time of reorganisation and had continuously remained in the territory of Chhattisgarh; his application for mutual allocation was necessitated only because the Union Government had initially allocated him to Madhya Pradesh contrary to his option. Thus the petitioner's case stands on a different footing from an employee

who was originally allocated to Madhya Pradesh and, after accepting such allocation, voluntarily sought transfer to Chhattisgarh for personal reasons. The principle that an employee coming by way of mutual transfer must ordinarily accept bottom seniority cannot, therefore, be mechanically applied to the peculiar facts of the petitioner's case. It is further submitted that the respondents cannot take advantage of their own earlier decision by which the petitioner's seniority was fixed, acted upon and followed for granting successive promotions. The petitioner had served as Executive Engineer from 19.09.2008 and had discharged the duties of the promotional post for several years without any objection. The subsequent re-fixation of seniority after such a prolonged period, followed by convening of a Review DPC and reversion of the petitioner, has caused serious civil and service consequences. Learned counsel would submit that even if there was any alleged error in the earlier fixation of seniority, the respondents were required to consider the petitioner's accrued rights, the long passage of time and the consequences of disturbing a settled seniority position before taking such drastic action.

12. It is also submitted that the order dated 23.03.2013 cannot be treated as having attained finality so as to defeat the present challenge, since the petitioner had submitted a representation dated 07.09.2013 against the said order and the matter thereafter culminated in the amended order dated 09.12.2015, which is specifically under challenge. The actual adverse civil consequence arose only when the respondents, on the basis of the order dated 09.12.2015, convened the Review DPC and ultimately passed the order dated

15.07.2016, resulting in the petitioner's reversion. The petitioner cannot, therefore, be non-suited merely on the ground that he did not earlier challenge the order dated 23.03.2013. The petitioner was not afforded an effective opportunity before the Review DPC was convened and his representation dated 05.05.2016 was not duly considered before the recommendations of the Review DPC were accepted. The impugned orders, therefore, suffer from violation of principles of natural justice, arbitrary disturbance of settled seniority and improper retrospective application of the circular dated 29.04.2005. Placing reliance upon the principle recognised by the Hon’ble Supreme Court in **V. Vincent Velankanni v. Union of India**, 2024 SCC OnLine SC 2642, learned counsel would submit that a long-settled seniority position should not be disturbed belatedly to the prejudice of an employee, particularly after successive promotions have already been granted on the basis thereof. It is, therefore, prayed that the orders dated 09.12.2015 and 15.07.2016 be quashed and the petitioner's earlier seniority and consequential service benefits be restored.

13. Mr. Ghanshyam Kashyap, Deputy Govt. Advocate, appearing for the State/Respondents No. 1 and 2 would submit that the petitioner was initially allocated to the State of Madhya Pradesh pursuant to the final allocation order dated 09.09.2002 and was subsequently brought to the State of Chhattisgarh only by way of mutual allocation at his own request; therefore, his seniority in the Chhattisgarh cadre is necessarily governed by Clause 9 of the circular dated 29.04.2005, under which an employee entering the cadre through mutual

allocation is required to be placed at the appropriate bottom position in the gradation list. The petitioner's earlier fixation of seniority was erroneous, and the same was rightly corrected by the competent authority; the order dated 23.03.2013 was not challenged by the petitioner and consequently attained finality. Learned counsel would further submit that the promotions granted to the petitioner as Assistant Engineer and Executive Engineer were based upon the erroneous seniority position and, therefore, the respondents were competent to convene the Review DPC and rectify the consequential illegality. The circular dated 29.04.2005 is not being applied retrospectively, but merely governs the determination of seniority of the petitioner in the Chhattisgarh cadre pursuant to his mutual allocation. The petitioner cannot claim a vested right to retain an erroneous seniority merely because it was acted upon for some years, nor can he accept the benefit of mutual allocation while avoiding the service consequences attached thereto. It is, therefore, submitted that the impugned orders dated 09.12.2015 and 15.07.2016 have been passed in accordance with the applicable policy and governing service conditions and warrant no interference in the exercise of writ jurisdiction.

14. Ms. Surya Kawalkar Dangi, learned counsel appearing for respondent No. 3 would submit that the writ petition is liable to be dismissed at the threshold, as the petitioner has challenged only the consequential orders dated 09.12.2015 and 15.07.2016, whereby his seniority was re-fixed, and the consequential review of his promotion was undertaken, without challenging the circulars dated 29.04.2005

and 20.05.2005 governing mutual allocation and fixation of seniority. It is submitted that the petitioner was admittedly not originally allocated to the State of Chhattisgarh. His services were finally allocated to the State of Madhya Pradesh by order dated 09.09.2002 and, thereafter, pursuant to his own application for mutual allocation with Shri Malay Kumar Shrivastava, he was subsequently allocated to Chhattisgarh in January 2005. Thus, his case is one of mutual allocation after final allocation and cannot be equated with an employee originally allocated to Chhattisgarh under the State Reorganisation Act. She would submit that mutual allocation is governed by its own service consequences and, under Clause 9 of the circular dated 29.04.2005, an employee entering the cadre of the successor State through such mutual allocation is required to be assigned seniority in the manner prescribed therein, so as not to prejudice employees already borne on the cadre. The petitioner, having voluntarily sought and accepted such mutual allocation, cannot accept the benefit of entering the Chhattisgarh cadre while simultaneously claiming preservation of his earlier Madhya Pradesh seniority. Such an approach would defeat the object of the policy and adversely affect the seniority of employees who were already serving in the Chhattisgarh cadre.

15. She further submits that the initial fixation of the petitioner's seniority was itself erroneous and could not confer any vested right merely because the error was subsequently acted upon for granting promotion. On a representation made by respondent No. 3, the competent authority examined the matter and passed an order dated

23.03.2013, whereby the petitioner's seniority was re-fixed in the gradation list. The petitioner did not challenge the said order and, therefore, the same attained finality. Subsequently, upon further correction of the gradation list by order dated 09.12.2015 in accordance with Clause 9 of the applicable circular, the Review DPC was convened, and the consequential order dated 15.07.2016 was passed. Learned counsel would submit that the promotions granted to the petitioner as Assistant Engineer with effect from 2003 and thereafter as Executive Engineer on 19.09.2008 were founded upon an incorrect seniority position and, therefore, no employee can claim a vested right to retain a promotion obtained on the basis of an erroneous fixation contrary to the governing service rules. The plea that the circular dated 29.04.2005 has been applied retrospectively is also misconceived, since the circular does not retrospectively impose any penalty or alter the petitioner's past service; rather, it prescribes the applicable method for determining his seniority in the Chhattisgarh cadre consequent upon his mutual allocation. Learned counsel would further submit that cadre seniority of employees already serving in the State cannot be disturbed merely to protect the position of an employee subsequently entering the cadre through mutual allocation. The principle of protection of settled seniority must operate in favour of employees already borne on the cadre and not in favour of an erroneous seniority granted to the petitioner. It is, therefore, submitted that the impugned orders are based upon the applicable policy, are intended only to rectify the petitioner's wrongly fixed seniority and the consequential promotional position, and

disclose neither violation of principles of natural justice nor any jurisdictional error warranting interference.

16. Ms. Anju Verma, learned counsel appearing for the intervenors, would submit that the petitioner was originally allocated to the State of Madhya Pradesh and subsequently came to the State of Chhattisgarh on his own request through mutual allocation; therefore, in terms of the applicable policy and the settled principle of service jurisprudence, he was required to be placed at the bottom of the relevant seniority list and could not claim seniority of his past service in the transferee cadre. It is submitted that the erroneous seniority granted to the petitioner adversely affected the promotional prospects of the intervenors, who were otherwise eligible for promotion to the post of Assistant Engineer with effect from 2003 and thereafter to the post of Executive Engineer. Learned counsel would further submit that the petitioner was subsequently granted promotion to the post of Superintending Engineer on the strength of the interim order passed in the present petition, thereby affecting the consideration of the intervenor for further promotion. It is also submitted that an employee transferred at his own request cannot carry his past seniority to the transferee cadre and must ordinarily be placed below the junior-most employee in that cadre. It is, therefore, submitted that the petitioner's claim for retention of seniority deserves to be rejected.

17. I have heard learned counsel appearing for the respective parties at length, perused the documents annexed with the petition and gone through their pleadings.

18. It is not in dispute that at the time of reorganisation of the State of Madhya Pradesh, the petitioner was posted at Jagdalpur, which was within the territory of Chhattisgarh. By the final allocation order dated 09.09.2002, the petitioner was allocated to the State of Madhya Pradesh. Thereafter, he made his representation on 16.10.2002 for mutual allocation with Mr. Malay Kumar Shrivastava. He also challenged his final allocation to the State of Madhya Pradesh by filing WP No. 2486/2002, which was decided on 28.04.2003, with the observation that:-

> "23. Counsel for the petitioners submitted that pursuant to interim orders passed by this Court, they have not been relieved and they are continuing. This statement is made at the Bar by the counsel for the petitioners and this is recorded. Counsel for the State submitted that they could not verify about the individual cases and the statement made at the Bar may be recorded. If in some cases or the other, it is found that the petitioners have made incorrect statement, they may be given liberty to make a mention by filing application for modification. The statements are recorded and the liberty is given to the State, as prayed. Relying on the statements made, it is directed that if the persons are not relieved they shall not be relieved. In the circumstances, it is directed that till the decision is given by the Central Government, the petitioners who have not been relieved and still continuing, shall be allowed to continue. So far those who have been relieved are concerned, they should mention this fact in their representation and it is for the Central Government to pass such order

> which the Central Government deems fit. It is made clear that the decision on the representation would be communicated to the concerned departments, who after receiving it would communicate it to the employees concerned. The directions are being issued to the respective departments so that the decision taken is served on the petitioners."

19. Considering the large number of representations, the Government of India, vide its memo dated 01.05.2003, issued a guideline for consideration of the representation under certain categories, and in para 2 of the memo dated 01.05.2003, it has been observed that:-

> "3. Mutual Transfer cases:
>
> A large number of representations have been received from personnel requesting for consideration of their mutual transfer with another consenting State service personnel. Since the Central Government has already issued final allocation orders, it finds no reason to entertain such requests. However, it is open to the successor State Governments to consider requests of mutual transfer based on broad consensus arrived between the State Governments, inter alia either defining the terms and conditions for such consideration or by framing suitable rules for this purpose."

20. The Government of India, vide its letter issued in January, 2005 (Annexure P-8), considered the representation of Mr. Malay Kumar Shrivastava, and ordered that:-

Sl No.	Name of the employee	Designation	Decision of the Central Government

3.	Shri Malay Kumar Srivastava	Sub-Engineer (Civil)	Allocation may be revised to Madhya Pradesh in mutual exchange with Shri Brijesh Kumar Pateria in terms of para 2 of DOPT order No 14/279/2002-SRS dated 1.5.2003

21. Thereafter, the Chhattisgarh Government passed an order on 11.04.2005, directing the petitioner to re-join at his present place of posting, which reads as under:-

> "कार्यालयीन पत्र क्रमांक / 33948129 / प्र. अ. / स्था / 2002 रायपुर दिनांक 18.10.2002 द्वारा आपको अंतिम रूप से म.प्र. कैडर आबंटित होने के फलस्वरूप म.प्र. में कार्यग्रहण करने हेतु कार्यमुक्त किया गया है। उक्त आबंटन के विरुद्ध माननीय उच्च न्यायालय के निर्णय के परिप्रेक्ष्य में आपके द्वारा प्रस्तुत अभ्यावेदन पर भारत शासन द्वारा जारी पत्र क्रमांक / 14 / 11 / 2005 / एस. आर. (एस) जनवरी 2005 में आपको पुनः छत्तीसगढ़ राज्य कैडर आबंटित किया गया है। अतः आपको दिनांक 11.04.2005 अपरान्ह को वर्तमान पदस्थापना कार्यालय में ही कार्यभार ग्रहण करने हेतु कार्यमुक्त किया जाता है। अब आप अपनी पुनः कार्यग्रहण सूचना इस कार्यालय को भी अभिलेख हेतु प्रस्तुत करें।"

22. Thereafter, by the order dated 12.07.2005 (Annexure P-10), the petitioner's placement in the gradation list was made on Sr. No. 479-A, and the order is as below:-

> "श्री एच. पी. बाथरी, उप अभियंता एवं श्री बृजेश कुमार पटोरिया, उप अभियंता को पूर्व में मध्यप्रदेश कैडर आबंटित होने के कारण छत्तीसगढ़ की वरिष्ठता सूची से उक्त दोनों उप अभियंता का नाम विलोपित किया गया था। चूंकि अब वर्तमान में माननीय उच्च न्यायालय के निर्णय के अनुसार दोनों उप अभियंता को छत्तीसगढ़ कैडर आबंटित किया गया है। अतः श्री एच. पी. बाथरी को सरल क्र. 81 श्री कन्हैया लाल स्वर्णकार के नीचे एवं सरल क्र. 82 श्री एच. एल. राठौर के ऊपर सरल क्र.

81 ए में वरिष्ठता का निर्धारण किया जाता है। इसी प्रकार श्री बृजेश कुमार पटोरिया को सरल क्रमांक 479 श्री शंकर कुमार गजभिये के नीचे एवं सरल क्र. 480 श्री मनोज थोराट के ऊपर सरल क्र. 479 ए में वरिष्ठता का निर्धारण किया जाता है। उक्त दोनों उप अभियंता से संबंधित अन्य अभिलेख (संलग्न प्रपत्र) के अनुसार यथावत रहेंगे।

उपरोक्त वरिष्ठता सूची के सरल क्र. 189 में अंकित श्री एस. एन. तिवारी एवं सरल क्र. 198 में अंकित श्री सुरेश कुमार दुबे जिन्हें कि मध्यप्रदेश कैडर आबंटित है, का उक्त सूची से उनका नाम विलोपित किया जाता है।"

23. On 29.04.2005, the Madhya Pradesh Government issued a notification with respect to directives for mutual transfer of the State Level employees in compliance with the memo dated 01.05.2003 issued by the Central Government. Clauses 9 and 10 of the said directives are relevant for its consideration, which read as under:-

"(9) पारस्परिक स्थानान्तरण के फलस्वरूप उत्तरवर्ती राज्य में कार्य ग्रहण करने वाले शासकीय सेवक का संविलियन करते हुए उनका सापेक्ष वरिष्ठता अखिल भारतीय सिविल सेवाओं की भांति मूल संवर्ग में उनके नियुक्ति/पदोन्नति वर्ष के अनुसार अन्त में निर्धारित की जावेगी, यथा शासकीय सेवक को उस संवर्ग में नियुक्ति/पदोन्नति यदि वर्ष 1994 की है, तो पारस्परिक स्थानान्तरण पर आये शासकीय सेवक का नाम पदक्रम सूची में वर्ष 1994 के उस संवर्ग में नियुक्त/पदोन्नत कुल शासकीय सेवकों के उल्लेखित अन्तिम नाम के नीचे तथा वर्ष 1995 में नियुक्त/पदोन्नत शासकीय सेवकों के नामों से ऊपर रखा जाएगा।

(10) भारत सरकार द्वारा किये गये अन्तिम राज्य आवंटन के दिनांक 1 नवम्बर 2000 के बाद शासकीय सेवक को उत्तरवर्ती राज्य में यदि पदोन्नति दी गई है और वे पारस्परिक स्थानान्तरण करना चाहते हैं तो उन्हें पारस्परिक स्थानान्तरण पर आये उत्तरवर्ती राज्य में अन्तिम आवंटन के समय धारित पद पर पदावनत कर उसी संवर्ग में संविलियन किया जावेगा, पारस्परिक

> स्थानान्तरण के फलस्वरूप उत्तरवर्ती राज्य में कार्यभार ग्रहण करने के बाद संबंधित अधिकारी/कर्मचारी के संवर्ग में यदि वे पदोन्नति हेतु पात्रता रखते हैं तो उस पर विचार किया जा सकेगा और ऐसे अधिकारी/कर्मचारी की सापेक्ष वरिष्ठता अखिल भारतीय सेवाओं की भांति मूल संवर्ग में उनके नियुक्ति/पदोन्नति वर्ष के अनुसार अन्त में निर्धारित की जावेगी, जैसा कि उपरोक्त क्रमांक 9 में उल्लेखित किया गया है।"

24. Pursuant to the said directives issued by Madhya Pradesh Government dated 29.04.2005, the placement of the petitioner is changed from 479-A to the bottom of 1993 batch employees by the order dated 23.03.2013 (Annexure P-14). The relevant part of the order dated 23.03.2013 is as under:-

> "श्री रामअवतार दिवाकर सहायक अभियंता के उपयंत्री के पद पर वरिष्ठता से संबंधित उनके अभ्यावेदन पर उठाये गये बिन्दुओं के परीक्षणोंपरांत वरिष्ठता का निम्नानुसार निर्धारण किया गया:-
>
> श्री बृजेश कुमार पटोरिया उपअभियंता को राज्य पुनर्गठन के उपरांत मध्यप्रदेश राज्य एवं श्री मलय श्रीवास्तव उपअभियंता को छत्तीसगढ़ राज्य आबंटित हुआ था। दोनों उपअभियंताओं के आपसी सहमति के आधार पर भारत सरकार कार्मिक एवं प्रशिक्षण विभाग का आदेश क्रमांक 14/11-2005-SR(S)01/2005 के द्वारा श्री मलय श्रीवास्तव उपअभियंता को मध्यप्रदेश राज्य एवं श्री बृजेश कुमार पटोरिया उपअभियंता को अंतिम रूप से छत्तीसगढ़ राज्य आबंटित किया गया।
>
> भारत सरकार द्वारा जारी पारस्परिक स्थानांतरण के आधार पर वरिष्ठता के राज्य व्यापी निर्धारण के विषय में छत्तीसगढ़ एवं मध्यप्रदेश राज्य के सहमति उपरांत जारी मध्यप्रदेश शासन सामान्य प्रशासन विभाग के पत्र क्रमांक एफ-11-17-2004-4(2) रा.पु.प्र. भोपाल दिनांक 29.04.2005 द्वारा जारी निर्देश के बिन्दु क्रमांक-9 अनुसार "पारस्परिक स्थानांतरण के फलस्वरूप उत्तरवर्ती राज्य में कार्यग्रहण करने वाले शासकीय सेवक का संविलियन करते हुए उनका सापेक्ष वरिष्ठता अखिल

भारतीय सिविल सेवाओं की भांति मूल संवर्ग में उनके नियुक्ति/पदोन्नति वर्ष के अनुसार अंत में निर्धारित की जावेगी।"

उपरोक्त निर्देशानुसार चूंकि श्री बृजेश कुमार पटोरिया उपअभियंता को परस्पर आपसी स्थानांतरण के तहत छत्तीसगढ़ राज्य आबंटित हुआ है। अतः उनका नियुक्ति वर्ष 1993 रखते हुए कार्यालय प्रमुख अभियंता, लोक निर्माण विभाग रायपुर के पत्र क्रमांक/स्था./33157123/03 दिनांक 12.07.2005 द्वारा जारी दिनांक 01.04.2003 की स्थिति में छत्तीसगढ़ शासन लोक निर्माण विभाग में पदस्थ उपअभियंता (सिविल) की संशोधित पदक्रम सूची में श्री बृजेश कुमार पटोरिया को, सरल क्रमांक 479 श्री शंकर कुमार गणवीर के नीचे एवं सरल क्रमांक 480 श्री मनोज थोरांट के ऊपर, सरल क्रमांक 479-अ में दिया गया वरिष्ठता में संशोधन किया जाकर भारत सरकार के परस्पर आपसी स्थानांतरण निर्देश मध्यप्रदेश राजपत्र दिनांक 29.04.2005 के बिन्दु क्रमांक-9 में दिये गये निर्देश के तहत श्री बृजेश कुमार पटोरिया को मूल संवर्ग में उनके नियुक्ति वर्ष 1993 के अंत में एवं 1994 में नियुक्ति/पदस्थापना उपअभियंता के पूर्व निर्धारित किया जाता है। उपअभियंता (सिविल) के दिनांक 01.04.2003 की वरिष्ठता सूची के सरल क्रमांक 515 श्री एल.एन.एस. राठौर के नीचे एवं सरल क्रमांक 516 श्री डी.एल. वर्मा के ऊपर सरल क्रमांक 515-अ में श्री बृजेश कुमार पटोरिया उपअभियंता का नाम स्थापित किया जाता है, तथा श्री रामअवतार दिवाकर उपअभियंता का नाम सरल क्रमांक 480 श्री मनोज थोरांट के नीचे सरल क्रमांक 481 यथावत् स्थापित किया जाता है।”

25. Thereafter, a notice was issued to the petitioner on 20.04.2016 (Annexure P-16), in which he was asked to submit his reply. The contents of the notice dated 20.04.2016 are that:-

“विषयांतर्गत लेख है कि दिनांक 18.02.2003 / 28.02.2003 को उप अभियंता से सहायक अभियंता (सिविल) के पद पर पदोन्नति हेतु विभागीय पदोन्नति समिति द्वारा तदर्थ पदोन्नति की बैठक आयोजित की गई थी। इस बैठक में अन्य उप अभियंताओं के साथ श्री रामअवतार दिवाकर का नाम भी विचार क्षेत्र में था।

तत्समय श्री दिवाकर के गोपनीय प्रतिवेदन अनुपलब्ध होने से, समिति द्वारा इनके संबंध में परिभ्रमण में विचार करने का निर्णय लिया गया था।

2/ उक्त तदर्थ पदोन्नति के नियमितीकरण हेतु दिनांक 29.12.2006 को विभागीय पदोन्नति समिति की बैठक संपन्न हुई थी। उक्त बैठक में उप अभियंता (सिविल) की दिनांक 01.11.2002 की स्थिति दर्शाने वाली वरिष्ठता सूची को पदोन्नति का आधार बनाया गया था।

3/ कार्यालय प्रमुख अभियंता, लोक निर्माण विभाग के आदेश दिनांक 15.05.2006 द्वारा श्री बृजेश कुमार पटोरिया का नाम उप अभियंता (सिविल) की दिनांक 01.11.2002 की स्थिति में जारी पदक्रम सूची में सरल क्रमांक-538 (अ) में स्थापित किया गया जिसके कारण दिनांक 29.12.2006 को संपन्न विभागीय पदोन्नति समिति की बैठक में समिति ने श्री बृजेश कुमार पटोरिया को उप अभियंता स्नातक अनुसूचित जाति वर्ग से सहायक अभियंता के पद पर पदोन्नत किये जाने की अनुशंसा की। श्री रामअवतार दिवाकर (स्नातक अनुसूचित जाति) का वरिष्ठता सूची में सरल क्रमांक-540 था, पद उपलब्ध नहीं होने के कारण श्री दिवाकर को पदोन्नति का लाभ प्राप्त नहीं हुआ।

4/ प्रकरण में कार्यालय प्रमुख अभियंता, लोक निर्माण विभाग, रायपुर के संशोधन आदेश क्रमांक—33157662/स्था./ प्र.अ./15, दिनांक 09.12.2015 में उल्लेख है कि श्री बृजेश कुमार पटोरिया, उप अभियंता को राज्य पुनर्गठन के उपरांत मध्यप्रदेश राज्य आबंटित हुआ था। आपसी सहमति के आधार पर भारत सरकार, कार्मिक एवं प्रशिक्षण विभाग के आदेश दिनांक जनवरी 2005 द्वारा श्री पटोरिया, उप अभियंता को अंतिम रूप से छत्तीसगढ़ राज्य आबंटित किया गया।

5/ सामान्य प्रशासन विभाग (राज्य पुनर्गठन प्रकोष्ठ), मंत्रालय, भोपाल के निर्देश दिनांक 29 अप्रैल 2005 के बिन्दु क्रमांक-9 के परिपालन में प्रमुख अभियंता, लोक निर्माण विभाग, रायपुर के आदेश दिनांक 09.12.2015 के द्वारा उप अभियंता (सिविल) की दिनांक 01.11.2002 की वरिष्ठता सूची में संशोधन किया जाकर आपका नाम सरल क्रमांक-577-अ में स्थापित किया गया है तथा श्री रामअवतार दिवाकर, उप

अभियंता का नाम सरल क्रमांक-540 में स्थापित है जिसमें श्री रामअवतार दिवाकर आपसे वरिष्ठ हैं।

6/ उपरोक्तानुसार वरिष्ठता संशोधित होने के आधार पर दिनांक 18.02.2003 / 28.02.2003 को आयोजित तदर्थ पदोन्नति तथा इसके नियमितीकरण हेतु संपन्न बैठक दिनांक 29.12.2006 के अनुक्रम में विभागीय पदोन्नति समिति की आयोजित रिव्यू बैठक दिनांक 11.12.2015 में विभागीय पदोन्नति समिति ने पाया कि श्री पटोरिया का वरिष्ठता निर्धारण मध्यप्रदेश शासन, सामान्य प्रशासन विभाग (राज्य पुनर्गठन प्रकोष्ठ) भोपाल के परिपत्र क्रमांक एफ 1-17/2004-4(2)-रापुप्र. / एक, दिनांक 29.04.2005 तथा छत्तीसगढ़ शासन, सामान्य प्रशासन विभाग के पत्र क्रमांक-एफ 1-1/1-7/2003, दिनांक 20.05.2005 के दिशा निर्देशों के अनुरूप पूर्व में किया गया होता तो वर्ष 2006 में, वर्ष 01.11.2002 की स्थिति में सहायक अभियंता (सिविल) के पद पर पदोन्नति हेतु संपन्न डी.पी.सी. के समय पदोन्नति समिति द्वारा अनुसूचित जाति संवर्ग से श्री बी.के. पटोरिया, स्नातक उप अभियंता के स्थान पर श्री रामअवतार दिवाकर को वर्ष 2003 से सहायक अभियंता (अनुसूचित जाति-स्नातक) तथा श्री पटोरिया को वर्ष 2008 पदोन्नति दिनांक से सहायक अभियंता (अनुसूचित जाति-स्नातक) के पद पर पदोन्नति का लाभ प्राप्त होता।

7/ दिनांक 11.12.2015 को संपन्न रिव्यू डी.पी.सी. में विभागीय पदोन्नति समिति ने श्री रामअवतार दिवाकर को वर्ष 2003 से सहायक अभियंता की वरिष्ठता श्री बी.के. पटोरिया के स्थान पर प्रदान किये जाने की अनुशंसा की है। प्रकरण में श्री बी.के. पटोरिया जो वर्ष 2008 में कार्यपालन अभियंता पदोन्नत हुए हैं, को सहायक अभियंता के रूप में अवनत किया जाना है तथा वर्ष 2008 की स्थिति में पुनः कार्यपालन अभियंता की रिव्यू डी.पी.सी. आयोजित कर श्री दिवाकर के नाम पर विचार किया जाना है।

अतः विभाग द्वारा वर्णित कार्यवाही किये जाने के पूर्व उपरोक्त संबंध में यदि आप अपना पक्ष प्रस्तुत करना चाहते हैं तो पत्र प्राप्ति के 10 दिवस में इस विभाग को अपना पक्ष प्रस्तुत करें।

यदि निर्धारित समयावधि में आपके द्वारा पक्ष प्रस्तुत नहीं किया गया तो एकपक्षीय रूप से अग्रिम कार्यवाही की जायेगी।”

26. The Chhattisgarh Government issued a notification with respect to the "मध्यप्रदेश पुनर्गठन अधिनियम, 2000 की धारा 68 की उपधारा (2) के अधीन उत्तरवर्ती राज्यों के अंतिम रूप से आवंटित शासकीय कर्मचारियों के पारस्परिक स्थानांतरण (पारस्परिक सहमति से अदला-बदली) नियम, 2005" for the period from 29.04.2005 to 28.04.2008. Clause 3 of the said Rules, 2005, provided for the procedure for fixation of seniority, which reads as under:-

> “3. संविलियन/ज्येष्ठता की प्रक्रिया.— मध्यप्रदेश पुनर्गठन अधिनियम, 2000 (क्र. 2 सन् 2000) की धारा 68 की उपधारा (2) के अधीन राज्य पुनर्गठन के परिणामस्वरूप भारत सरकार द्वारा किए गए उत्तरवर्ती मध्यप्रदेश राज्य के राज्य स्तर के अधिकारियों/कर्मचारियों के अंतिम आवंटन पर, मध्यप्रदेश राज्य से छत्तीसगढ़ राज्य में तथा छत्तीसगढ़ राज्य से मध्यप्रदेश राज्य में पारस्परिक सहमति से स्थानांतरण के परिणामस्वरूप शासकीय कर्मचारियों की संविलियन/ज्येष्ठता निम्नानुसार होगी:-
>
> (1) पारस्परिक स्थानांतरण के परिणामस्वरूप संविलियन के पश्चात् उस शासकीय सेवक की सांपेक्षिक (रिलेटिव) ज्येष्ठता, जिसमें उत्तरवर्ती राज्य में पदभार ग्रहण किया है, मूल संवर्ग में उनकी नियुक्ति/पदोन्नति की तारीख के अनुसार अंत में नियत की जाएगी; उदाहरणार्थ यदि संवर्ग (काडर) में शासकीय सेवक की नियुक्ति/पदोन्नति का वर्ष 1994 है, तो उस शासकीय सेवक का नाम जिसमें पारस्परिक स्थानांतरण पर पदभार ग्रहण किया है, संबंधित वर्ष 1994 में उस संवर्ग में नियुक्त/पदोन्नत सभी शासकीय सेवकों के अंतिम नाम के नीचे रखा जाएगा तथा वर्ष 1995 में नियुक्त/पदोन्नत शासकीय कर्मचारियों के नाम से पहले रखा जाएगा।
>
> (2) यदि शासकीय सेवक, जो अंतिम आवंटन के पश्चात् उस पद पर जो वह भारत सरकार द्वारा अंतिम आवंटन

> के समय धारित कर रहा था/रही थी, उत्तरवर्ती राज्य में पदोन्नत किया गया हो तथा पारस्परिक स्थानांतरण के आधार पर पदभार ग्रहण करता है, तो उसे उस पद पर, जो वह अंतिम आवंटन के समय धारित कर रहा था/रही थी, पदावनत किया जाएगा तथा उसका सभी संवर्ग (काडर) में संविलियन किया जाएगा तथा उसकी ज्येष्ठता उप नियम (1) के अनुसार विनिश्चित की जाएगी।"

27. Thereafter, on 09.12.2015 (Annexure P-2), the following amended order was passed with respect to the posting and placement in the gradation list of the petitioner, which reads as under:-

> "कार्यालयीन पत्र क्रमांक 33157000/2002 दिनांक 18.11.2002 द्वारा उपअभियंता (सिविल) की दिनांक 01.11.2002 की स्थिति में जारी पदक्रम सूची में श्री बृजेश पटोरिया उपअभियंता (सिविल) को अंतिम रूप से म.प्र. केडर आबंटित होने के कारण उपअभियंता पदक्रम सूची में इनका नाम शामिल नहीं किया गया था।
>
> भारत शासन द्वारा राज्य पुनर्गठन के तहत श्री बृजेश कुमार पटोरिया उपअभियंता को मध्यप्रदेश राज्य एवं श्री मलय कुमार श्रीवास्तव उपअभियंता को छत्तीसगढ़ राज्य आबंटित हुआ था। दोनों उपअभियंताओं के द्वारा आपसी सहमति के आधार पर पारस्परिक स्थानांतरण हेतु प्रस्तुत अभ्यावेदन के आधार पर भारत सरकार कार्मिक, लोकशिकायत एवं पेंशन मंत्रालय नई दिल्ली के आदेश क्रमांक 14/11.2005/एस.आर.(एस) जनवरी, 2005 द्वारा श्री बृजेश कुमार पटोरिया को पारस्परिक अंतरण के आधार पर अंतिम रूप से छ.ग. राज्य आबंटित किया गया है।
>
> इस कार्यालय के पत्र क्रमांक 33157000/2002 दिनांक 18.11.2002 द्वारा दिनांक 01.11.2002 की स्थिति में उपअभियंता (सिविल) की जारी पदक्रम सूची में श्री पटोरिया का नाम शामिल नहीं था। तत्पश्चात् इस कार्यालय के आदेश क्रमांक 33157209/स्था./प्र.अ./06 रायपुर दिनांक 15.05.2005 द्वारा दिनांक 01.11.2002 की स्थिति में उपअभियंता (सिविल) की पदक्रम सूची में श्री बृजेश कुमार पटोरिया उपअभियंता (सिविल) का नाम सरल क्रमांक 538 श्री शंकर कुमार गणवीर के नीचे एवं

स.क्र. 539 श्री मनोज थोरांट के ऊपर सरल क्रमांक 538 (अ) में स्थापित किया गया।

श्री रामअवतार दिवाकर सहायक अभियंता (तत्कालीन उपअभियंता) द्वारा श्री बृजेश कुमार पटोरिया उपअभियंता (सिविल) के वरिष्ठता सूची में संशोधन के विरुद्ध प्रस्तुत अभ्यावेदन का परीक्षण किया गया। परीक्षणोंपरांत निम्नानुसार वरिष्ठता का निर्धारण किया जाता है -

श्री बृजेश कुमार पटोरिया उपअभियंता को राज्य पुनर्गठन के उपरांत मध्यप्रदेश राज्य एवं श्री मलय कुमार श्रीवास्तव उपअभियंता को छत्तीसगढ़ राज्य आबंटित हुआ था। दोनों उपअभियंताओं के आपसी सहमति के आधार पर भारत सरकार कार्मिक एवं प्रशिक्षण विभाग के आदेश क्रमांक 14/11-2005-एस.आर.(एस.)01/2005 द्वारा श्री मलय कुमार श्रीवास्तव उपअभियंता को मध्यप्रदेश राज्य एवं श्री बृजेश कुमार पटोरिया उपअभियंता को अंतिम रूप से छत्तीसगढ़ राज्य आबंटित किया गया।

भारत सरकार द्वारा जारी पारस्परिक स्थानांतरण के आधार पर वरिष्ठता के राज्यव्यापी निर्धारण के विषय में छत्तीसगढ़ एवं मध्यप्रदेश राज्य के सहमति उपरांत जारी मध्यप्रदेश शासन सामान्य प्रशासन विभाग के पत्र क्रमांक एफ-1-17-2004-4(2) रा.पु.प्र. भोपाल दिनांक 29.04.2005 द्वारा जारी निर्देश के बिन्दु क्रमांक-9 अनुसार "पारस्परिक स्थानांतरण के फलस्वरूप उत्तरवर्ती राज्य में कार्यग्रहण करने वाले शासकीय सेवक का संविलियन करते हुए उनका सापेक्ष वरिष्ठता अखिल भारतीय सिविल सेवाओं की भांति मूल संवर्ग में उनके नियुक्ति/पदोन्नति वर्ष के अनुसार अंत में निर्धारित की जावेगी।"

उपरोक्त निर्देशानुसार चूंकि श्री बृजेश कुमार पटोरिया उपअभियंता को परस्पर आपसी स्थानांतरण के तहत छत्तीसगढ़ राज्य आबंटित हुआ है, अतः उनका नियुक्ति वर्ष 1993 के अंत में एवं 1994 में नियुक्ति/पदोन्नत उपअभियंता के पूर्व वरिष्ठता निर्धारित किया जाना है।

श्री बृजेश कुमार पटोरिया को छ.ग. राज्य आबंटन वर्ष 2005 में होने के कारण कार्यालयीन पत्र क्रमांक 33157000/2002

दिनांक 18.11.2002 द्वारा उपअभियंता (सिविल) की दिनांक 01.11.2002 की स्थिति में जारी पदक्रम सूची में कार्यालयीन संशोधन आदेश क्रमांक 33157209/स्था./प्र.अ./06 रायपुर, दिनांक 15.05.2005 द्वारा श्री बृजेश कुमार पटोरिया का नाम शंकर कुमार गणवीर सरल क्रमांक 538 के नीचे एवं श्री मनोज थोरांट स.क्र. 539 के ऊपर 538 (अ) में स्थापित किया गया था, को संशोधित करते हुए, मध्यप्रदेश राजपत्र दिनांक 29.04.2005 के बिन्दु क्रमांक-9 में वरिष्ठता निर्धारण के संबंध में दिये गये निर्देश के अनुसार दिनांक 18.11.2002 को उपअभियंता (सिविल) की दिनांक 01.11.2002 की स्थिति में जारी वरिष्ठता सूची में श्री बृजेश कुमार पटोरिया उपअभियंता (सिविल) का नाम सरल क्रमांक 577 (श्री एल.एन.एस. राठौर) के नीचे एवं सरल क्रमांक 578 (श्री डी.एल. वर्मा) के ऊपर सरल क्रमांक 577-अ में स्थापित किया जाता है।"

28. After his representation, the Chhattisgarh Government has passed the order on 15.07.2016 (Annexure P-1), which is the impugned order in the present writ petition, which is as under:-

"क्रमांक एफ 2-7 / 2015 / 19 / स्था.-2 :: सामान्य प्रशासन विभाग (राज्य पुनर्गठन प्रकोष्ठ) मंत्रालय, भोपाल के राजपत्र में प्रकाशित निर्देश क्रमांक एफ 1-17-2004-4(2)-रापुप्र.-एक, दिनांक 29.04.2005 में आपसी अदला-बदली के तहत श्री बी.के. पटोरिया, तत्कालीन उप अभियंता का छत्तीसगढ़ राज्य आबंटन होने के फलस्वरूप सामान्य प्रशासन विभाग (राज्य पुनर्गठन प्रकोष्ठ), मंत्रालय, रायपुर के परिपत्र क्रमांक एफ 1-1 / 1-7 / 2003, दि. 20.05.2005 के परिपालन में कार्यालय प्रमुख अभियंता, लोक निर्माण विभाग, रायपुर के आदेश क्रमांक- 33157662 / स्था. / प्र.अ. / 15, दिनांक 09.12.2015 द्वारा उप अभियंता (सिविल) की दिनांक 01.11.2002 की वरिष्ठता सूची में संशोधन किया जाकर सरल क्रमांक-577-अ में श्री बृजेश कुमार पटोरिया, उप अभियंता का नाम स्थापित किया गया है तथा श्री रामअवतार दिवाकर, उप अभियंता का नाम सरल क्रमांक-540 में स्थापित है। उक्त स्थिति में श्री रामअवतार दिवाकर, श्री बी.के. पटोरिया से वरिष्ठ है।

2/ उक्तानुसार वरिष्ठता संशोधित होने पर दिनांक 18.02.2003 / 28.02.2003 को सहायक अभियंता (सिविल) के पद पर आयोजित तदर्थ पदोन्नति तथा इसके नियमितीकरण हेतु संपन्न बैठक दिनांक 29.12.2006 के अनुक्रम में विभागीय पदोन्नति समिति की रिव्यू बैठक दिनांक 11.12.2015 को आयोजित की गई।

3/ श्री बृजेश कुमार पटोरिया की उपरोक्तानुसार वरिष्ठता संशोधित होने के आधार पर विभागीय पदोन्नति समिति ने पाया कि श्री पटोरिया का वरिष्ठता निर्धारण मध्यप्रदेश शासन, सामान्य प्रशासन विभाग (राज्य पुनर्गठन प्रकोष्ठ), भोपाल के परिपत्र दिनांक 29.04.2005 व छत्तीसगढ़ शासन, सामान्य प्रशासन विभाग के परिपत्र दिनांक 20.05.2005 के दिशा निर्देशों के अनुरूप पूर्व में किया गया होता तो वर्ष 2006 में, वर्ष 01.11.2002 की स्थिति में सहायक अभियंता (सिविल) के पद पर पदोन्नति हेतु संपन्न डी.पी.सी. के समय पदोन्नति समिति द्वारा अनुसूचित जाति संवर्ग से श्री बी.के. पटोरिया, स्नातक उप अभियंता के स्थान पर श्री रामअवतार दिवाकर (अनुसूचित जाति-स्नातक) को वर्ष 2003 से सहायक अभियंता तथा श्री बी.के. पटोरिया को वर्ष 2008 से सहायक अभियंता (अनुसूचित जाति-स्नातक) के पद पर पदोन्नति का लाभ प्राप्त होता।

4/ विभागीय पदोन्नति समिति की रिव्यू बैठक दिनांक 11.12.2015 को आयोजित बैठक में दिनांक 29.12.2006 को उपअभियंता से सहायक अभियंता के पद पर पदोन्नति हेतु समिति द्वारा निर्धारित किये गये मापदण्ड के अनुसार श्री रामअवतार दिवाकर, श्री बी.के. पटोरिया के स्थान पर पदोन्नति हेतु उपयुक्त पाये गये।

उक्त संबंध में श्री पटोरिया को पत्र दिनांक 20.04.2016 द्वारा सूचना पत्र जारी कर पत्र प्राप्ति के 10 दिवस में अपना पक्ष रखने हेतु अवसर दिया गया था। श्री पटोरिया द्वारा दिनांक 05.05.2016 के द्वारा अपना पक्ष रखते हुए समक्ष में सुनवाई का अवसर दिये जाने हेतु निवेदन किया गया। उक्त निवेदन के आधार पर श्री पटोरिया को प्रकरण में सुनवाई हेतु दिनांक 04.06.2016 को अवसर दिया गया।

श्री पटोरिया सुनवाई हेतु दिनांक 04.06.2016 को समक्ष में उपस्थित हुये। उनके द्वारा तर्क दिया गया कि उनका पारस्परिक स्थानांतरण मध्यप्रदेश से छत्तीसगढ़ में जनवरी 2005 में किया गया। तत्समय वरिष्ठता निर्धारण के संबंध में स्पष्ट आदेश / निर्देश नहीं [थे]। वरिष्ठता निर्धारण में आदेश / निर्देश / नीति अप्रैल 2005 में प्रथम बार अधिसूचित की गई। यदि परस्पर स्थानांतरण के समय उन्हें इनका ज्ञान होता तो परस्पर स्थानांतरण का आवेदन ही प्रस्तुत नहीं करते। चूंकि नीति / निर्देश की अधिसूचना उनके आबंटन के पश्चात की गई है। अतः पश्चातवर्ती नीति के आधार पर उनकी वरिष्ठता का निर्धारण किया जाना न्याय संगत नहीं है।

सामान्य प्रशासन विभाग राज्य पुनर्गठन प्रकोष्ठ, मंत्रालय वल्लभ भवन, भोपाल के अधिसूचना दिनांक 29.04.2005 द्वारा दोनों राज्यों द्वारा विचार विमर्श करने के पश्चात भारत सरकार द्वारा अंतिम रूप से आबंटित राज्य स्तरीय अधिकारियों / कर्मचारियों को आपसी सहमति से पारस्परिक स्थानांतरण के संबंध में निर्देश जारी किये गये है। उक्त निर्देश के सरल क्रमांक 9 एवं 10 में उल्लेखित अनुसार पारस्परिक स्थानांतरण के फलस्वरूप संविलियन / वरिष्ठता के संबंध में अधिसूचना दिनांक 17 अप्रैल 2007 (पारस्परिक सहमति से अदला-बदली) नियम 2005 बनाये गये है। उक्त नियम के नियम 3(1) में प्रावधान है, कि पारस्परिक स्थानांतरण के परिणामस्वरूप संविलियन के पश्चात उस शासकीय सेवक की सापेक्षिक (रिलेटिव) ज्येष्ठता, जिसने उत्तरवर्ती राज्य में पदभार ग्रहण किया है, मूल संवर्ग में उनकी नियुक्ति / पदोन्नति की तारीख के अनुसार अंत में नियत की जायेगी।

पारस्पर स्थानांतरण के प्रकरण में प्रचलित निर्देशों के आधार पर प्रमुख अभियंता द्वारा जो कार्यवाही की गई है, वह उचित है। अतः श्री पटोरिया का अभ्यावेदन तथ्यों पर आधारित नहीं होने के कारण मान्य योग्य नहीं पाया गया।

5/ विभागीय पदोन्नति समिति की रिव्यू बैठक दिनांक 11.12.2015 में समिति की अनुशंसा के अनुक्रम में राज्य शासन एतद्वारा श्री रामअवतार दिवाकर तत्कालीन उप अभियंता को तदर्थ पदोन्नति वर्ष 2003 से सहायक अभियंता (सिविल) के

पद पर पदोन्नत किया जाता है। श्री दिवाकर को पदोन्नत पद का वास्तविक लाभ इनके द्वारा सहायक अभियंता के पद पर कार्यभार ग्रहण करने के दिनांक से ही प्राप्त होगा। इसके पूर्व की अवधि का "कार्य नहीं वेतन नहीं (No Work No Pay)" के सिद्धांत के आधार पर कोई एरियर देय नहीं होगा। इसके साथ ही श्री दिवाकर की वरिष्ठता सहायक अभियंता (सिविल) की पदक्रम सूची दिनांक 01.04.2004 की स्थिति में श्री मनोज थोरांट सरल क्र. 120 के नीचे एवं श्री वीरेन्द्र कुमार बेदिया सरल क्र. 121 के ऊपर सरल क्र. 120-अ में निर्धारित की जाती है। उक्त पदक्रम सूची में से श्री बृजेश कुमार पटोरिया का नाम विलोपित किया जाता है।

6/ विभागीय पदोन्नति समिति की अनुशंसानुसार श्री रामअवतार दिवाकर को श्री बी.के. पटोरिया के स्थान पर वर्ष 2003 से सहायक अभियंता (सिविल) के पद पर पदोन्नति दिये जाने के फलस्वरूप श्री बी.के. पटोरिया को वर्ष 2008 से सहायक अभियंता के पद पर पदोन्नत किया जाता है। इसके साथ ही श्री पटोरिया की वरिष्ठता सहायक अभियंता (सिविल) की दिनांक 01.04.2009 की स्थिति में जारी पदक्रम सूची के सरल क्रमांक-157 श्री प्रदीप के गुप्ता के नीचे एवं श्री शिवलाल ठाकुर सरल क्रमांक-158 के ऊपर सरल क्रमांक-157-अ में निर्धारित किया जाता है। चूंकि श्री पटोरिया द्वारा कार्यपालन अभियंता पद पर कार्य किया जाकर वेतन प्राप्त किया गया है, अतः उनसे वेतन की वसूली (रिकवरी) नहीं की जावेगी तथा श्री दिवाकर को कार्य नहीं वेतन नहीं के सिद्धांत के आधार पर कोई एरियर देय नहीं होगा।

7/ उक्त पदोन्नति के संबंध में अनुसूचित जाति / अनुसूचित जनजाति के लिए आरक्षण संबंधी नियमों / आदेशों का पालन किया गया है।”

29. As regards the first submission raised by the learned counsel for the petitioner that the petitioner’s long-standing seniority cannot be disturbed after a considerable lapse of time, it is required to examine whether the petitioner has approached the Court within a reasonable time and whether interference at a belated stage would unsettle a

position which has remained accepted for a considerable period. In **P.S. Sadasivaswamy v. State of Tamil Nadu**, (1975) 1 SCC 152, the Hon'ble Supreme Court observed that a person aggrieved by promotion of a junior should ordinarily approach the Court within six months or, at the most, within a year, and that stale claims should ordinarily not be entertained. The same principle has subsequently been reiterated in **Union of India v. C. Girija**, (2019) 15 SCC 633, wherein the Hon'ble Supreme Court held that a belated representation does not revive a stale cause of action.

30. However, the aforesaid principle has to be applied having regard to the nature of the cause of action and the conduct of the parties. The present case is not one where the petitioner remained silent from the very inception and, after an unexplained delay, has sought to claim a new seniority position. The record, as noticed hereinabove, shows that after his allocation to Chhattisgarh, the petitioner's seniority was considered by the competent authority, initially fixed with effect from 01.04.2003 and thereafter re-fixed with effect from 01.11.2002. On the basis of such seniority, he was considered for promotion as Assistant Engineer and was thereafter promoted as Executive Engineer on 19.09.2008. Thus, the seniority position was not merely a tentative entry in a gradation list; it was acted upon by the department for granting successive promotional benefits. The petitioner also submitted a representation dated 07.09.2013 against the order dated 23.03.2013, and the matter was thereafter reconsidered, culminating in the order dated 09.12.2015. Therefore, the objection of the respondent that the petitioner has approached

this Court only after remaining silent over the entire period cannot be accepted in its absolute form.

31. The distinction between a belated claim and a case where an existing service position is sought to be disturbed by the employer after a considerable lapse of time is material. Here, the impugned action is not merely refusal to grant a benefit claimed by the petitioner after delay; rather, it seeks to unsettle a seniority position which had already been determined by the competent authority and acted upon for several years, resulting in promotions to higher posts. The respondents seek to justify the action on the ground that the earlier fixation was erroneous. However, even where an administrative authority discovers an error in its earlier decision, the question whether such error can be corrected after a prolonged period, particularly when third-party and accrued service rights have intervened, has to be examined with due regard to the principles of fairness, certainty and prejudice. The Hon'ble Supreme Court in **R.K. Mobisana Singh v. Kh. Temba Singh**, (2008) 1 SCC 747, has recognised that seniority, though not a fundamental right, is a civil right and that such a right cannot be taken away without affording the affected employee an opportunity of hearing.

32. In the facts of the present case, therefore, the issue cannot be answered merely by observing that the order dated 23.03.2013 was not independently challenged. The petitioner had admittedly submitted a representation dated 07.09.2013 against the said order, and the respondents themselves subsequently issued the amended order dated 09.12.2015. The latter order is the immediate foundation

for the Review DPC and the consequential order dated 15.07.2016, which resulted in the petitioner's reversion from the post of Executive Engineer. Thus, the challenge is required to be examined with reference to the entire chain of events and not by isolating the order dated 23.03.2013 from the subsequent decision-making process. The principle against disturbing settled service positions after an inordinate lapse of time, therefore, assumes significance in the present case.

33. The second issue, whether the promotion granted to the petitioner on the basis of such seniority could be withdrawn/reviewed when there is no allegation of any misrepresentation or fraud on his part, concerns the effect of the alleged erroneous seniority upon the promotions already granted to the petitioner. There is no allegation in the pleadings that the petitioner had secured his earlier seniority or promotion by practising fraud, misrepresentation or suppression of material facts. On the contrary, the seniority was fixed by the competent departmental authorities, and the petitioner was considered and promoted through the regular departmental process. In such circumstances, the petitioner cannot be treated on the same footing as an employee who obtained promotion by making a false representation or by concealing relevant facts. The distinction is important because the petitioner was not responsible for the alleged erroneous fixation of his seniority.

34. The Hon’ble Supreme Court has consistently recognised the principle that where an employee has received a benefit because of an error committed by the administration and the employee himself is not

responsible for such error, the consequences of the administrative mistake cannot ordinarily be visited upon the employee in an inequitable manner. In "**Ram Ujarey v. Union of India**", (1999) 1 SCC 685, the Hon'ble Supreme Court held that where an employee had earned promotions on the basis of service benefits earlier extended by the department, and the department later sought to withdraw that benefit on the ground of mistake, the employee could not be reverted without first informing him of the proposed action and giving him an opportunity of hearing. The principle is not that an erroneous promotion becomes legally incapable of correction in every circumstance; rather, the absence of employee fault is a relevant and significant factor while determining whether the employee can be subjected to adverse consequences after the benefit has been granted and enjoyed for a considerable period. Though the notice was issued to the petitioner, the notice dated 20.04.2016 (Annexure P-16), order dated 09.12.2015 (Annexure P-2) and dated15.07.2016 (Annexure P-1) clearly demonstrate that the decision has already been taken to re-fix his seniority at his earlier position and withdraw the promotional benefit of the petitioner, and the issuance of notice would be an empty formality.

35. Applying the aforesaid principle to the present case, it is not sufficient for the respondents merely to state that the petitioner's promotion was founded upon an erroneous seniority position. It was also necessary to examine whether the petitioner was responsible for the alleged error, whether the seniority was fixed by the competent authority after consideration of his case, how long the said position

remained undisturbed, and what consequences would follow from reopening it after the petitioner had already been promoted to the post of Executive Engineer and had served there for several years. The petitioner's promotion dated 19.09.2008 was not shown to have been obtained through any misrepresentation on his part. Therefore, even if the respondents were entitled to correct the seniority position in accordance with the governing rules, the consequential reversion could not automatically follow merely as a matter of course without examining the equities and the legal consequences arising from the long-standing departmental decision.

36. The third issue raised by the petitioner, whether the petitioner could be reverted from the post of Executive Engineer pursuant to a Review DPC without affording him an effective opportunity of hearing relating to natural justice, assumes still greater significance because the ultimate consequence of the impugned action was not merely alteration of the petitioner's position in the gradation list, but reversion from the post of Executive Engineer. The petitioner has specifically pleaded that no prior notice was given to him before the Review DPC was convened, that he came to know about the proposed review only through communication dated 20.04.2016, and that he thereafter submitted a detailed representation dated 05.05.2016. The respondents have not demonstrated, from the material placed on record, that before taking the final decision dated 15.07.2016 the petitioner's objections were duly considered by the competent authority or that an effective opportunity was afforded to

him to establish why his earlier seniority and consequential promotion should not be disturbed.

37. The requirement of natural justice becomes particularly relevant when an administrative decision has adverse civil consequences. In the present case, the proposed action affected the petitioner's seniority, promotional status and ultimately resulted in his reversion from Executive Engineer to Assistant Engineer. Such consequences cannot be characterised as merely ministerial or consequential in the narrow sense. The Hon’ble Supreme Court in **R.K. Mobisana Singh** (supra) has specifically recognised seniority as a civil right and held that such right cannot be taken away without affording an opportunity of hearing to the affected employee. Therefore, once the respondents proposed to alter the seniority which had formed the basis of the petitioner's successive promotions and to take consequential action against him, the petitioner was entitled to an effective opportunity to place his objections before the competent authority.

38. The fact that a Review DPC was subsequently constituted does not, by itself, cure the absence of an opportunity of hearing. A Review DPC examines the service record and determines the employee's entitlement in the light of the corrected position; it is not necessarily a substitute for an opportunity to contest the foundational decision by which the employee's seniority itself has been altered. The petitioner's representation dated 05.05.2016 was therefore required to be considered before the competent authority took the final decision resulting in reversion. If the representation was not

considered, or if the decision dated 15.07.2016 does not disclose consideration of the material objections raised therein, the consequential order would suffer from violation of the principles of natural justice.

39. There is another aspect which cannot be overlooked. The respondents seek to apply Clause 9 of the circular dated 29.04.2005 to the petitioner's case on the premise that his entry into the Chhattisgarh cadre was by way of mutual allocation. The question whether the said circular could validly govern an allocation which had already taken place in January 2005, and whether the petitioner's peculiar circumstances arising from the State reorganisation and his original option for Chhattisgarh distinguish his case from an ordinary mutual transfer, are substantive questions requiring examination. These questions cannot be answered merely by describing the subsequent action as a “correction” of an erroneous seniority. Before disturbing an already settled seniority and the promotions flowing therefrom, the authority was required to determine the applicability of the circular to the petitioner's case in accordance with law and after considering the objections raised by him.

40. In this regard, the reliance placed by learned counsel for the petitioner upon **V. Vincent Velankanni v. Union of India**, 2024 SCC OnLine SC 2642, is relevant to the extent that the decision is relied upon for the principle concerning disturbance of an established seniority position after a considerable lapse of time. The Hon’ble Supreme Court held that:-

> “50. Thus, much water has flown under the bridge and retrospective application of the GO issued in 2015 would open floodgates of litigation and would disturb the seniority of many employees causing them grave prejudice and heartburn as it would disturb the crystallized rights regarding seniority, rank and promotion which would have accrued to them during the intervening period. To alter a seniority list after such a long period would be totally unjust to the multitudes of employees who could get caught in the labyrinth of uncertainty for no fault of theirs and may suffer loss of their seniority rights retrospectively.”

41. The principle of finality in service matters, however, cannot be applied mechanically in favour of either side. The Court has to balance the legality of the original seniority fixation, the conduct of the employee, the delay in correction by the administration, the rights of other employees, and the prejudice resulting from reopening the matter. Thus, the question is not merely whether the earlier seniority was ultimately found to be erroneous, but whether, in the facts of the present case, it was legally permissible and procedurally fair to unsettle that position after it had been acted upon for several years and after the petitioner had already earned successive promotions.

42. Another relevant consideration is that respondent No. 3 has already attained the age of superannuation and has retired from service. Therefore, even if the petitioner's promotion is disturbed retrospectively, no effective promotional benefit can now accrue to respondent No. 3, nor can he be granted any consequential promotion after his retirement. Thus, the proposed reversion of the

petitioner would not result in advancement of any presently enforceable promotional right of respondent No. 3. On the other hand, such reversion would cause serious prejudice to the petitioner, who has continued on the promotional post for a considerable period and, after several years, would be required to suffer the adverse consequences of an administrative decision for which he is not shown to be responsible.

43. On a cumulative consideration of the aforesaid facts and circumstances, this Court is of the considered view that the respondents were not justified in disturbing the petitioner's seniority after a considerable lapse of time, particularly when such seniority had been fixed by the competent authority and had been acted upon for granting successive promotions. There is no allegation that the petitioner had secured such seniority or the consequential promotions by practising fraud, misrepresentation or suppression of any material fact. The petitioner had already been promoted as Assistant Engineer and thereafter as Executive Engineer and had discharged the duties of the promotional post for several years. The subsequent re-fixation of his seniority and the consequential review of his promotion, therefore, resulted in serious civil consequences to the petitioner. Further, the fact that respondent No.3 has already attained the age of superannuation and retired from service is also a relevant circumstance. Even if the petitioner's promotion is disturbed retrospectively, no effective promotional benefit can now accrue to respondent No.3 by reason thereof. On the other hand, such reversion would cause serious prejudice to the petitioner, who has

continued on the promotional post for a considerable period and would, after several years, be subjected to the adverse consequences of an administrative decision for which he is not shown to be responsible. More importantly, before giving effect to the Review DPC recommendations, the petitioner's objections raised in his representation dated 05.05.2016 were required to be duly considered. The impugned order dated 15.07.2016 does not disclose such consideration in a manner commensurate with the serious civil consequences flowing therefrom.

44. In the aforesaid circumstances, this Court is of the considered view that the impugned orders dated 09.12.2015 and 15.07.2016 cannot be sustained. The order dated 09.12.2015, whereby the petitioner's seniority was re-fixed to his prejudice, and the consequential order dated 15.07.2016, whereby the recommendations of the Review DPC were given effect to, resulting in alteration of the petitioner's promotional status, are hereby **quashed and set aside**. The seniority position of the petitioner as existing immediately prior to the order dated 09.12.2015 shall stand restored.

45. The writ petition is accordingly **allowed**.

46. There shall be no order as to costs.

Sd/-
(Ravindra Kumar Agrawal)
Judge

ved