

A SHIBA SHANKAR MOHAPATRA & ORS.
v.
STATE OF ORISSA & ORS.
(Civil Appeal Nos. 7537-7541 of 2009)

NOVEMBER 12, 2009

B [TARUN CHATTERJEE AND DR. B.S. CHAUHAN, JJ.]

Service Law – Seniority – Inter-se seniority – Between Sub-Inspectors (General) SI(g) and Sub-Inspectors (Stenographers) SI(St)– SI(g) challenging seniority of SI(St) over them – Challenge made after 8-9 years from the date of appointment – Tribunal relying on a judgment passed by it in a similar case – The judgment relied on was passed on the basis of letters from Government departments – Writ petition before High Court – Partly allowed – On appeal, held: Challenge barred by delay/laches – Reliance upon the said judgment was misconceived – The judgment to be treated as judgment in personem – The said case filed at a belated stage – In absence of Rules or Executive Instructions, Tribunal could not have determined the inter-se seniority – Letters cannot be treated as executive instructions and hence cannot be relied upon

E *Delay/Laches – Delay in challenging seniority – Entertainability of the challenge – Held: Seniority can be challenged within a reasonable period – Challenge beyond such period needs to be explained – Court exercising public law jurisdiction does not encourage agitation of stale claims, where right of third party is affected.*

F *Interpretation of Statutes – Interpretation of Rules and Executive Instructions – Administrative interpretation thereof – Provides guidelines for interpreting them – They may be accepted, if not violative of the Rules – However, the court is not bound to, accept the mistaken construction of the statute.*

G *Doctrines/Principles – Doctrine of 'Contemporanea expositio'– Applicability of.*

In a case (Parasuram's case) involving inter-se seniority

between the cadre of Sub-Inspectors (General) [SI(g)] and Sub-Inspectors (Stenographers) [SI(St)], Administrative Tribunal directed the department to consider seniority of the applicant-SI(g), over two officers-SI(St) keeping in view the letter issued by the Home Department and the law Deptt. of the State, according to which, seniority of the SI(St) would be determined after their entry into General Wing after passing the Training Course.

Appellants-SI(g) in the present cases, filed applications before Administrative Tribunal. The applications were disposed of, relying on the decision in *Parsuram's* case. Aggrieved by the judgments passed by the Tribunal, SI(St) filed writ petitions. High Court partly allowed the writ petitions. It directed to reconsider the case of promotion of SI(g) to the post of Inspectors, and if it was found that they had been placed below SI(St), they should be granted promotion (if they fulfilled minimum eligibility criteria) from the date their counterparts in the other wing had been promoted. However, directions issued by the Tribunal to prepare the gradation list of SI(St) and SI(g) in accordance with the dates of passing out of the Sub-Inspector training course, was quashed. Hence the present appeals.

Appellants contended that courts below could not have relied on the letters written by Home Department and by Ministry of Law, as they were merely opinions and could not be treated as Executive Instructions; that in absence of statutory rules for determining the *inter-se* seniority, long-standing practice for determination of such seniority, could not be disturbed at a belated stage, while the SI(St) had further been given two promotions and that was not challenged; and that High Court erred in not taking into consideration the distinction between eligibility for promotion and seniority.

Disposing of the appeals, the Court

HELD: 1.1. Seniority and eligibility for promotion are two different concepts altogether. In absence of any statutory rules, the executive instructions for fixing the

A inter se seniority of two wings of the Sub-Inspectors could
 have been issued by the State Government. Admittedly, no
 such executive instruction has ever been issued. The
 letters issued by the Government Departments, being
 merely opinion of the Departments could not be conferred
 status of the executive instructions. [Paras 14 and 15] [879-
 B A, G-H; 880-A]

1.2. The judgment of the Tribunal treating opinion of
 the Law Ministry and Home Department as statutory Rules/
 Executive Instructions is not worth acceptance. Mere
 opinion given by various departments of the Government
 cannot be termed as Executive instructions. [Para 13] [878-
 C F-H]

Sant Ram vs. State of Rajasthan AIR 1967 SC 1910;
Union of India vs. H.R. Patankar and Ors. AIR 1984 SC 1587,
 D relied on.

2.1. Once the seniority had been fixed and it remains
 in existence for a reasonable period, any challenge to the
 same should not be entertained. 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
 E explanation. [Para 29] [884-E-F]

2.2. 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 laches. The
 Court exercising public law jurisdiction does not
 encourage agitation of stale claims where the right of third
 parties crystallises in the interregnum. [Para 28] [884-B]
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2.3. The Tribunal ought to have dismissed the case of
Parsuram Sahu only on the ground of delay and laches, as
 the applicant approached the Tribunal at the verge of his
 retirement and after getting two promotions while the other
 parties have got three promotions. In the said case, the
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private respondents have not considered it proper to contest the case because both of them were likely to superannuate just thereafter on attaining the age of retirement. The said judgment and order has not been challenged by anybody and it attained finality but that remained the judgment in personem. More so, there is nothing on record to show as to whether the said applicant could ever get any relief from the State Government. [Para 30] [884-G-H; 885-A-B]

2.4. The O.A. filed by one of the SI (g) in the present case had similar facts as in *Pursuram Sahu's* case. While deciding the said application, the Tribunal itself had taken note of the facts that promotions had been made 8-9 years ago prior to issuance of the combined gradation list in 1999. The said application ought to have been rejected by the Tribunal only on the ground of delay and laches. The High Court has also not dealt with this issue, however, it goes to the root of the cause. Such an inordinate delay cannot be ignored particularly when the issue of delay has been pressed in service before this Court. [Para 30] [885-A-C]

2.5. The applicants in OA No.203 of 2001 claimed to have been appointed in 1993. Their names should have definitely been included in the final gradation list circulated in June 1997. However, there is no explanation by them as to how it could not be challenged before the Tribunal and under what circumstances the gradation list issued in 1999 was challenged in 2001. If the seniority list is to be challenged within 3-4 years of its issuance OA No.203/2001 should have been dismissed on the ground of delay and laches, without entering into the merits of the case. [Para 31] [885-F-G]

2.6. The judgment and order of the High Court arising out of the judgment passed in OA No. 203/2001, is set aside only to the extent of the last part of the order, namely, "if it is found that promotion of a Sub-Inspector was not considered before consideration of Sub-Inspector placed below him in the seniority list, his promotion shall be

- A considered with effect from the date of promotion of his junior in case he had fulfilled minimum eligibility criteria for promotion at the time of consideration of his junior". [Para 34] [886-E-F]

- B 2.7. The issue before the High Court was regarding the principle of seniority for preparation of a combined gradation list of SIs(St) and SIs(g). The High Court failed to decide the said issue, rather directed preparation of a combined list in conformity with eligibility criterion. [Para 32] [885-H; 886-A]

- C *R. Prabha Devi and Ors. vs. Government of India and Ors.* AIR 1988 SC 902; *Ramchandra Shanker Deodhar and Ors. vs. State of Maharashtra and Ors.* AIR 1974 SC 259; *R.S. Makashi vs. I.M. Menon and Ors.* AIR 1982 SC 101; *K.R. Mudgal and Ors. vs. R.P. Singh and Ors.* AIR 1986 SC 2086; *B.S. Bajwa vs. State of Punjab and Ors.* AIR 1999 SC 1510;
- D *Dayaram Asanand vs. State of Maharashtra and Ors.* AIR 1984 SC 850; *P.S. Sadasivaswamy vs. State of Tamil Nadu* AIR 1975 SC 2271; *Smt. Sudama Devi vs. Commissioner and Ors.* (1983) 2 SCC 1; *State of U.P. vs. Raj Bahadur Singh and Anr.* (1998) 8 SCC 685; *Northern Indian Glass Industries vs. Jaswant Singh and Ors.* (2003) 1 SCC 335; *Dinkar Anna Patil & Anr. vs. State of Maharashtra* AIR 1999 SC 152; *K.A. Abdul Majeed vs. State of Kerala and Ors.* (2001) 6 SCC 292; *Aflatoon and Ors. vs. Lt. Governor, Delhi and Ors.* AIR 1974 SC 2077; *State of Mysore vs. V.K. Kangan and Ors.* AIR 1975 SC 2190; *Municipal Council, Ahmednagar and Anr. vs Shah Hyder Beig and Ors.* AIR 2000 SC 671; *Inderjit Gupta vs. Union of India and Ors.* (2001) 6 SCC 637; *Shiv Dass vs. Union of India and Ors.* AIR 2007 SC 1330; *Regional Manager, A.P.SRTC vs. N. Satyanarayana and Ors.* (2008) 1 SCC 210;
- F *City and Industrial Development Corporation vs. Dosu Aardeshir Bhiwandiwalla and Ors.* (2009) 1 SCC 168, relied on.

Tilokchand Motichand vs. H.B. Munshi AIR 1970 SC 898; *R. N. Bose vs. Union of India and Ors.* AIR 1970 SC 470; *State of Madhya Pradesh and Anr. vs. Bhailal Bhai etc. etc.,* AIR 1964 SC 1006; *Malcom Lawrance Cecil D'Souza vs. Union of India*

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and Ors. AIR 1975 SC 1269, referred to.

3.1. Administrative interpretation may provide the guidelines for interpreting the Rule or Executive Instruction and may be accepted unless it is found in violation of the Rules itself. The Court may not be bound to accept the mistaken construction of the statutes by those who had been dealing with the working of the Statute. [Para 12] [878-C-D]

3.2. In view of denial by the State, of the facts that after receiving the opinion of the Law Ministry as well as of the Home Ministry, the practice was changed and also in absence of any finding of fact recorded by either of the courts below, it is not safe to give due weightage to the doctrine of 'contemporanea expositio' in the facts and circumstances of the case. [Para 12] [878-E]

K.P. Varghese vs. Income-tax Officer, Ernakulam and Anr. AIR 1981 SC 1922; Collector of Central Excise, Bombay-I and Anr. vs. M/s. Parle Export (P) Ltd. AIR 1989 SC 644; Indian Metals and Ferro Alloys Ltd. Cuttack vs. The Collector of Central Excise, Bhubaneshwar AIR 1991 SC 1028; N. Suresh Nathan and Ors. vs. Union of India and Ors. AIR 1992 SC 564; M.B. Joshi and Ors. vs. Satish Kumar Pandey and Ors. AIR 1993 SC 267; Desh Bandhu Gupta & Co. and Ors vs. Delhi Stock Exchange Association Ltd. AIR 1979 SC 1049; State of Tamil Nadu vs. Mohi Traders AIR 1989 SC 1167; M/s. Punjab Traders vs. State of Punjab and Ors. AIR 1990 SC 2300; M/s. Oswal Agro Mills Ltd. vs. Collector of Central Excise AIR 1993 SC 2288, referred to.

Case Law Reference :

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| AIR 1981 SC 1922 | Referred to. | Para 8 |
| AIR 1989 SC 644 | Referred to. | Para 8 |
| AIR 1991 SC 1028 | Referred to. | Para 8 |
| AIR 1992 SC 564 | Referred to. | Para 9 |
| AIR 1993 SC 267 | Referred to. | Para 9 |
| AIR 1979 SC 1049 | Referred to. | Para 10 |
| AIR 1989 SC 1167 | Referred to. | Para 10 |

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|---|------------------|--------------|---------|
| A | AIR 1990 SC 2300 | Referred to. | Para 11 |
| | AIR 1993 SC 2288 | Referred to. | Para 11 |
| | AIR 1967 SC 1910 | Relied on. | Para 13 |
| | AIR 1984 SC 1587 | Relied on. | Para 13 |
| | AIR 1988 SC 902 | Relied on. | Para 14 |
| B | AIR 1974 SC 259 | Relied on. | Para 16 |
| | AIR 1970 SC 898 | Referred to. | Para 16 |
| | AIR 1970 SC 470 | Referred to. | Para 17 |
| | AIR 1982 SC 101 | Relied on. | Para 18 |
| | AIR 1964 SC 1006 | Referred to. | Para 18 |
| C | AIR 1986 SC 2086 | Relied on. | Para 19 |
| | AIR 1975 SC 1269 | Referred to. | Para 20 |
| | AIR 1999 SC 1510 | Relied on. | Para 21 |
| | AIR 1984 SC 850 | Relied on. | Para 22 |
| | AIR 1975 SC 2271 | Relied on. | Para 23 |
| D | (1983) 2 SCC 1 | Relied on. | Para 25 |
| | (1998) 8 SCC 685 | Relied on. | Para 25 |
| | (2003) 1 SCC 335 | Relied on. | Para 25 |
| | AIR 1999 SC 152 | Relied on. | Para 26 |
| | (2001) 6 SCC 292 | Relied on. | Para 27 |
| E | AIR 1974 SC 2077 | Relied on. | Para 28 |
| | AIR 1975 SC 2190 | Relied on. | Para 28 |
| | AIR 2000 SC 671 | Relied on. | Para 28 |
| | (2001) 6 SCC 637 | Relied on. | Para 28 |
| | AIR 2007 SC 1330 | Relied on. | Para 28 |
| F | (2008) 1 SCC 210 | Relied on. | Para 28 |
| | (2009) 1 SCC 168 | Relied on. | Para 28 |

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7537-7541 of 2009.

From the Judgment & Order dated 07.02.2008 of the High Court of Orissa at Cuttack in WP (C) Nos. 426, 1233, 2878, 3424 & 5637 of 2006.

P.P. Rao, Janaranjan Das, Swetaketu Mishra, P.P. Nayak, for the Appellants.

L.N. Rao, (Radha Shyam Jena, Shibashish Misra, Arunav Patnaik, Deeptakirti Verma, Milind Kumar, for the Respondents.

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The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. Leave granted in all the matters.

2. These appeals have been preferred against the judgment and order dated 7.2.2008 passed in writ petition nos.426, 1233, 2878, 3424 and 5637 of 2006 by the High Court of Orissa at Cuttack by which the High Court has partly allowed all the writ petitions quashing certain directions issued by the Orissa Administrative Tribunal (hereinafter called the 'Tribunal'), however, directed to reconsider the case of promotion of Sub-Inspectors (General) (hereinafter called 'SIs (g)') to the post of Inspectors, in case it is found that the SIs (g) had been placed below the Sub-Inspectors (Steno) (hereinafter called SIs (St)), they should be granted promotion from the date their counterparts in the other wing had been promoted, in case, they fulfilled minimum eligibility criteria for promotion at the time of consideration of their respective juniors. Such an exercise was directed to be completed within a period of six months. However, the writ petitions have been allowed to the extent that the direction issued by the Tribunal to prepare the gradation list of SIs (St) and SIs(g) in accordance with the dates of passing out of the Sub-Inspector training course, has been quashed.

3. The facts and circumstances giving rise to these appeals are that most of the officers appellants/respondents involved in all these five appeals, had been appointed in 1972-73 onwards as SIs (g) and SIs (St). The eligibility for appointment had been different for both the wings. An additional qualification of stenography was required for the post of SI (St). After selection, candidates who were appointed as SIs (St) were given direct appointment and after five years, thereof, they were sent for training and after successful completion of training, they could become SIs(g) and could be considered for further promotion as Inspectors. So far as the SIs (g) were concerned after their selection they were sent for training in Police Training College and after completion thereof, they were appointed on probation for 2 years. Most of the officers belonging to both groups had been promoted as Inspectors, Deputy Superintendent of Police and Superintendent of Police and by now retired after attaining the age of superannuation. There are claims and counter-claims

- A regarding issuance of their inter-se seniority lists in 1979, and in the year 1992. However, it remains undisputed that after considering the objections received by the Department, a final inter-se seniority list was issued in 1997 and again in 1999. One
- B SI (g) Parsuram Sahu, appointed in 1968 filed representation before the State Govt. to fix his seniority over and above two officers belonging to the group of SIs (St) and as no order was passed he approached the Tribunal by filing OA No.316/2000 – *Parsuram Sahu vs. Principal Secretary, Home Department, Govt. of Orissa & Ors.* with a prayer for direction to recast the gradation list published in June 1997 and to place him over and
- C above the respondent nos.4 and 5 therein. The said application was allowed by the Tribunal vide judgment and order dated 27.4.2005 (Annexure-P/4) with a direction to consider the representation of Shri Parsuram Sahu keeping in mind the letter issued by the Home Department dated 3.2.1987 according to
- D which, the seniority of the SIs (St) would be determined after their entry into General wing after passing the Training Course. The other O.A. No.23/2000 – *Sudhir Chandra Ray vs. State of Orissa & Ors.* was decided vide judgment and order dated 8.12.2005 placing reliance upon the judgment in Parsuram Sahu's case and similar direction was issued. Same remained the fate of OA
- E No.203/2001 – *Sushanta Kumar Biswal & Ors. vs. State of Orissa & Ors.* filed by officers appointed in 1993 as SIs (g) as the said Application was also disposed of by the Tribunal relying upon its earlier judgments in Parsuram Sahu and Sudhir Chandra Ray's cases. Being aggrieved, Writ Petition No.624 of 2006 was
- F filed by SIs (St) in the High Court challenging the judgment and order in OA No.203 of 2001, and four other writ petitions against the judgment and order in OA No.23 of 2000. All the said petitions have been disposed of by the High Court by a common judgment and order impugned herein. Hence, these appeals.
- G 4. Shri P.P. Rao, Ld. Senior Counsel appearing for the appellants has submitted that there could be no justification for the Tribunal/High Court to place reliance upon the letters, one written by the Home Department dated 3.2.1987 and the other by Ministry of Law dated 14.2.1990 as the said letters were merely an opinion of the Departments and could not be treated
- H as being Executive instructions. In fact, no executive instruction

had ever been issued taking into consideration the said letters. In absence of any statutory rules for determining their inter-se seniority, the general principle of determination of seniority i.e. to reckon the period from the initial appointment i.e. continuous period/length of service should have been taken into consideration. The long standing practice followed by the State Authorities that SIs (St) would rank senior to SIs(g) could not be disturbed at such a belated stage, as it had been given effect to all throughout this period. More so, as the first part of the order passed by the Tribunal, namely, to prepare the gradation list of SIs (St) and SIs(g) in accordance with the dates of passing the course from the training college, has been set aside by the High Court and has not been challenged by anybody, has attained finality and therefore, the direction given against the present appellants regarding the eligibility qua the seniority is liable to be quashed. The High Court erred in not taking note of distinction between eligibility for promotion and seniority. More so, the two Original Applications have been decided by the Tribunal merely by placing reliance upon its earlier judgment in *Parsuram Sahu* (supra) which could not have been entertained at such a belated stage. Hence, the appeals deserve to be allowed.

5. On the contrary, Shri L.N. Rao, Ld. Senior Counsel appearing for the SIs (St) has submitted that the High Court has issued direction only to give effect to the statutory rules, particularly, Rule 650 of the Orissa Police Manual Rules (hereinafter called 'the Rules') which provides that eligibility of Sub-Inspectors for promotion to the rank of Inspectors have to be determined as per Rule 650(a)(ii) which provides for minimum 10 years continuous service after passing of the training course. SIs(St) are appointed in terms of Rule 683 read with annexure 42 to the Rules. Nature of job of SIs(St) is entirely different from the duties of SIs(g). The SIs(St) basically perform Secretarial duties; SIs(St) are required to go through the training course and then appointed on probation as SIs(g). Rules also require confirmation as SIs(g). Thus, it cannot be termed as in continuation of their previous appointment as SIs(St). Period of service rendered as SI(s) can be treated only as a qualifying service and cannot be counted for the purpose of seniority. Therefore, no fault can be found with the impugned judgment. The

A appeals are liable to be dismissed.

B 6. Shri Radhey Shyam Jena, Ld. Counsel appearing for the State has fairly conceded that the rules for determining the inter-se seniority have not yet been framed. Earlier SIs(St) had been treated senior to SIs(g) for a long period but after receiving the opinion from the Ministry of Law, such a practice has been abandoned. What the Tribunal and the High Court have taken into consideration were merely opinions of the Government Departments and not the executive instructions. The cases require to be decided in correct perspective.

C 7. We have considered the rival submissions canvassed on behalf of the parties and perused the record. The basic judgment involved herein is, in the case of Parsuram Sahu by the Tribunal and it may be pertinent to mention here that the said judgment had not been challenged by any person either before the High Court or before this Court and thus attained finality. Therefore, it becomes necessary for this Court to examine the correctness of that judgment and effect thereof, as the other judgments have been delivered by the Tribunal merely by placing reliance upon it. The admitted facts involved therein reveal that one Pursuram Sahu SI (g) joined the Police Services in 1968. He was promoted to the rank of Inspector in 1986 and to the rank of D.S.P. in 1998. In his O.A. before the Tribunal, he impleaded only two private persons, namely, Shri Bijaya Brata Kundu and Shri Paresh Ch. Mohanty who had been working as Superintendents of Police in the year 2000. The said private respondents had been appointed as SIs (St) on 25.1.1966 and 23.2.1966 respectively. F The said respondents did not enter appearance nor contested the case. Therefore, questions do arise as to whether in absence of any statutory rule for determining their seniority as SIs, the Tribunal could disturb the uninterrupted practice in the State to place SI(St) above SI(g) while preparing their inter se seniority and whether the application could be entertained by the Tribunal at such a belated stage, particularly, when promotions of the respondents therein to the posts of Inspector, D.S.P. or Superintendent of Police had never been challenged. G

H 8. The question of application of the doctrine of *contemporanea expositio* has been considered by this Court

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taking into account the factual matrix of the case. In *K.P. Varghese vs. Income-tax Officer, Ernakulam & Anr.* AIR 1981 SC 1922, this Court applied the rule of *contemporanea expositio* as the Court found it a well established rule of interpretation of a statute by reference to the exposition it has received from contemporary authority. However, the Court added the words of caution that such a rule must give way where the language of the statute is plain and unambiguous.

Similarly, in *Collector of Central Excise, Bombay-I & Anr. vs. M/s. Parle Export (P) Ltd.*, AIR 1989 SC 644, this Court observed that the words used in the provision should be understood in the same way in which they have been understood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with them. In *Indian Metals and Ferro Alloys Ltd., Cuttack vs. The Collector of Central Excise, Bhubaneswar*, AIR 1991 SC 1028, the Court has applied the same rule of interpretation by holding that *contemporanea expositio* by the administrative authority is a very useful and relevant guide to the interpretation of the expression used in a statutory instrument.

9. In *N. Suresh Nathan & Ors. vs. Union of India & Ors.* AIR 1992 SC 564; and *M.B. Joshi & Ors. vs. Satish Kumar Pandey & Ors.* AIR 1993 SC 267, this Court observed that construction in consonance with long-standing practice prevailing in the concerned department is to be preferred.

10. In *Desh Bandhu Gupta & Co. & Ors. vs. Delhi Stock Exchange Association Ltd.* AIR 1979 SC 1049; and *State of Tamil Nadu vs. Mohi Traders*, AIR 1989 SC 1167, this Court observed that the principle of *contemporanea expositio*, i.e. interpreting a document by reference to the exposition it has received from Competent Authority can be invoked though the same will not always be decisive of the question of construction. The administrative construction, i.e. the contemporaneous construction placed by administrative or executive officers responsible for execution of the Act/Rules etc. generally should be clearly wrong before it is over-turned. Such a construction commonly referred to as practical construction although not controlling, is nevertheless entitled to considerable weight and

A is highly persuasive. However, it may be disregarded for cogent reasons.

B 11. The executive interpretation placed by those who are charged with executing the statute, though not binding, is nevertheless entitled to considerable weight as highly persuasive. However, the application of the doctrine in respect of modern Statutes has been doubted by this Court (vide *M/s. Punjab Traders vs. State of Punjab and Ors.* AIR 1990 SC 2300 and *M/s. Oswal Agro Mills Ltd. vs. Collector of Central Excise* AIR 1993 SC 2288).

C 12. In view of the above, one may reach the conclusion that administrative interpretation may provide the guidelines for interpreting the Rule or executive instruction and may be accepted unless it is found in violation of the Rules itself. The Court may not be bound to accept the mistaken construction of the statutes by those who had been dealing with the working of the Statute.

D In instant Appeals, this fact has been mentioned at several places by the present appellants but has not been considered either by the Tribunal or by the High Court. Shri Jena, Ld. Counsel for the State has denied the facts submitting that after receiving the opinion of the Law Ministry as well as of the Home Ministry, the practice was changed. In absence of any finding of fact recorded by either of the Courts below, it is not safe to give due weightage to this doctrine in the facts and circumstances of the case.

F 13. More so, the judgment of the Tribunal treating opinion of the Law Ministry and Home Department as statutory rules/ Executive instructions is not worth acceptance. In *Sant Ram vs. State of Rajasthan* AIR 1967 SC 1910, a Constitution Bench of this Court has held that statutory rules cannot be amended by Executive instructions but "if the rules are silent" on any particular point, Government can fill up the gaps by issuing executive instructions, in conformity with the existing rules. Similar view has been reiterated in *Union of India v. H.R. Patankar & Ors.* AIR 1984 SC 1587. However, mere opinion given by various departments of the Government cannot be termed as Executive instructions.

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14. One must not loose sight that seniority and eligibility for promotion are two different concepts altogether. Explaining the difference between the two, this Court in *R. Prabha Devi & Ors. vs. Government of India & Ors.* AIR 1988 SC 902 held as under :-

“15. The rule-making authority is competent to frame rules laying down eligibility condition for promotion to a higher post. When such an eligibility condition has been laid down by service rules, it cannot be said that a direct recruit who is senior to the promotees is not required to comply with the eligibility condition and he is entitled to be considered for promotion to the higher post merely on the basis of his seniority.....When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be considered for appointment. Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfils the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor it can override it in the matter of promotion to the next higher post.

When certain length of service in a particular cadre can validly be prescribed and is so prescribed, unless a person possesses that qualification, he cannot be considered eligible for appointment. There is no law which lays down that a senior in service would automatically be eligible for promotion. Seniority by itself does not outweigh experience.”

15. Thus, in view of the above we are of the opinion that in absence of any statutory rules, the executive instructions for fixing the inter se seniority of two wings of the Sub-Inspectors could have been issued by the State Government. Admittedly, no such executive instruction has ever been issued. The letters issued by the Government Departments, being merely opinion of the Departments could not be conferred status of the executive

A instructions.

16. 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 Shanker Deodhar & Ors. v. State of Maharashtra & Ors.* AIR

B 1974 SC 259, 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
C 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*, AIR 1970 SC 898, wherein it has been observed that the principle, on which the Court proceeds in refusing relief to the petitioner on the ground
D 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:-

E "A party claiming fundamental rights must move the Court before others' rights come out into existence. The action of the Courts cannot harm innocent parties if their rights emerge by reason of delay on the part of person moving the court."

F 17. This Court also placed reliance upon its earlier judgment of the Constitution Bench in *R.N. Bose v. Union of India & Ors.* AIR 1970 SC 470, wherein it has been observed as under:-

G "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 defeated after the number of years."

H 18. In *R.S. Makashi vs. I.M. Menon & Ors.* AIR 1982 SC 101, 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 Madhya Pradesh & Anr. vs. Bhailal Bhai etc. etc.*, 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:-

"We must administer justice in accordance with law and principle 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..... 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 196. We would accordingly hold that the challenge raised by the petitioners against the seniority principles laid down in the Government Resolution of March 2, 1968 ought to have been rejected by the High Court on the ground of delay and laches and the writ petition, in so far as it related to the prayer for quashing the said Government resolution, should have been dismissed." (Emphasis added)

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

"A government servant who is appointed to any post ordinarily should at least *after a period of 3-4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity.....* Satisfactory service conditions postulate that there shall be no sense of uncertainty amongst the Government servants created by writ petitions filed after several years as in this case. *It is essential that any one who feels aggrieved by the seniority assigned to him, should approach the Court as early as possible otherwise*

A in addition to creation of sense of insecurity in the mind of
 Government servants, there shall also be administrative
 complication and difficulties.... In these circumstances we
 consider that the High Court was wrong in rejecting the
 preliminary objection raised on behalf of the respondents
 B to the writ petition on the ground of laches." (Emphasis
 added)

20. While deciding the case, this Court placed reliance upon
 its earlier judgment in *Malcom Lawrance Cecil D'Souza v. Union*
of India & Ors. AIR 1975 SC 1269, wherein it had been observed
 as under:-

C "Although security of service cannot be used as a shield
 against the administrative action for lapse of a public
 servant, by and large one of the essential requirement of
 contentment and efficiency in public service is a feeling of
 security. It is difficult no doubt to guarantee such security in
 D all its varied aspects, *it should at least be possible to*
ensure that matters like one's position in a seniority list
after having been settled for once should not be liable to
be re-opened after lapse of many years in the instance of
 a party who has itself intervening party chosen to keep quiet.
 E Raking up old matters like seniority after a long time is likely
 to resort 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)

F 21. In *B.S. Bajwa vs. State of Punjab & Ors.* AIR 1999 SC
 1510, this Court while deciding the similar issue re-iterated the
 same view, observing as under:-

G "It is well settled that in service matters, the *question of*
seniority should not be re-opened in such situations after
the lapse of 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 along was sufficient to decline interference
 under Article 226 and to reject the writ petition". (Emphasis
 added)

H 22. In *Dayaram Asanand vs. State of Maharashtra & Ors.*

AIR 1984 SC 850, while re-iterating 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. A

23. In *P.S. Sadasivaswamy vs. State of Tamil Nadu* AIR 1975 SC 2271, this Court considered the case where the petition was filed after lapse of 14 years challenging the promotion. However, this Court held that aggrieved person must approach the Court expeditiously for relief and it is not permissible to put forward stale claim. The Court observed as under :- B

“A person aggrieved by an order promoting a junior over his head should approach the Court at least within 6 months or at the most a year of such promotion.” C

24. 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 extra ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who standby and allow things to happen and then approach the Court to put forward stale claim and try to unsettle settled matters. D E

25. A similar view has been re-iterated by this Court in *Smt. Sudama Devi vs. Commissioner & Ors.* (1983) 2 SCC 1; *State of U.P. vs. Raj Bahadur Singh & Anr.* (1998) 8 SCC 685; and *Northern Indian Glass Industries vs. Jaswant Singh & Ors.* (2003) 1 SCC 335. F

26. In *Dinkar Anna Patil & Anr. vs. State of Maharashtra*, AIR 1999 SC 152, 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. G

27. In *K.A. Abdul Majeed vs. State of Kerala & Ors.* (2001) 6 SCC 292, 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 H

A therein had correctly been fixed.

28. 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 & Ors. vs. Lt. Governor, Delhi & Ors.*, AIR 1974 SC 2077; *State of Mysore vs. V.K. Kangan & Ors.*, AIR 1975 SC 2190; *Municipal Council, Ahmednagar & Anr. vs. Shah Hyder Beig & Ors.*, AIR 2000 SC 671; *Inderjit Gupta vs. Union of India & Ors.* (2001) 6 SCC 637; *Shiv Dass vs. Union of India & Ors.*, AIR 2007 SC 1330; *Regional Manager, A.P.SRTC vs. N. Satyanarayana & Ors.* (2008) 1 SCC 210; and *City and Industrial Development Corporation vs. Dosu Aardeshir Bhiwandiwalla & Ors.* (2009) 1 SCC 168).

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

30. The Tribunal ought to have dismissed the case of *Parsuram Sahu* (supra) only on the ground of delay and the laches, as the applicant approached the Tribunal at the verge of his retirement and after getting two promotions while the other parties have got three promotions. In the said case, the private respondents have not considered it proper to contest the case because both of them were likely to superannuate just thereafter on attaining the age of retirement. Undoubtedly, the said judgment and order has not been challenged by anybody and it attained finality but that remained the judgment in personem.

More so, there is nothing on record to show as to whether the said applicant Parsuram Sahu could ever get any relief from the State Government. The O.A. filed by Shri Sudhir Chandra Ray, had similar facts as in Pursuram Sahu's case. While deciding the said application the Tribunal itself had taken note of the facts that promotions had been made 8-9 years ago prior to issuance of the combined gradation list in 1999. It is evident from the impugned judgment that Shri Sudhir Chandra Ray joined as SI(g) on 4.1.1973. He was promoted to the rank of Inspector with effect from 12.3.1991. We are of the considered opinion that the said application ought to have been rejected by the Tribunal only on the ground of delay and laches. The High Court has also not dealt with this issue, however, it goes to the root of the cause. Such an inordinate delay cannot be ignored particularly when the issue of delay has been pressed in service before this Court.

31. The appellants have specifically pleaded that a seniority list was issued in 1979. Subsequently, another seniority list was issued in 1992. A tentative seniority list was circulated in 1996, and after considering the objections by the State Authorities, a final seniority list was issued in June 1997. Again the seniority list was circulated in 1999. Though there had been dispute regarding issuance of the said seniority lists, however, the High Court in its judgment has taken note of the seniority list of 1979. Circulation of gradation list in June 1997 cannot be disputed/ doubted for the simple reason that in Pursuram Sahu's case only this gradation list was under challenge. The applicants in OA No.203 of 2001 claimed to have been appointed in 1993. Their names should have definitely been included in the final gradation list circulated in June 1997. However, there is no explanation by them as to how it could not be challenged before the Tribunal and under what circumstances the gradation list issued in 1999 was challenged in 2001. At the cost of repetition, it is stated that, if the seniority list is to be challenged within 3-4 years of its issuance, we fail to understand as to why even OA No.203/2001 could not be dismissed on the ground of delay and laches, without entering into the merits of the case.

32. The issue before the High Court was regarding the principle of seniority for preparation of a combined gradation list

A of SIs (St) and SIs(g). However, the High Court failed to decide the said issue rather directed preparation of a combined list in conformity with eligibility criterion.

B 33. The other original application filed in Sudhir Chandra Ray's case was liable to be dismissed only on the ground of delay and laches and we dismiss the same. The High Court has set aside the direction issued by the Tribunal directing the State Authorities to prepare the gradation list of SI(St) and SI(g) in accordance with the dates of passing out of the Sub-Inspector training course. This part of the order has not been challenged by anybody and thus, this part of the order has attained finality, therefore, the said part of the order does not require any interference in either of these appeals. So far as the appeals arising out of writ petition nos.1233/06, 2878/06, 3424/06 and 5637/06 are concerned, stand allowed to that extent and the remaining part of the direction contained in paragraph 9 of the judgment stand set aside.

E 34. So far as the appeal arising out of writ petition no.426/06 which has arisen from the judgment and order of the Tribunal in OA No.203/2001 is concerned, the relevant facts thereof, have not been taken into consideration either by the Tribunal or by the High Court and the matter has been decided making reference to the facts of other connected cases. Thus, in view of the above, we set aside the judgment and order of the High Court in Writ Petition No.426/06 only to the extent of the last part of the order, namely, "if it is found that promotion of a Sub-Inspector was not considered before consideration of Sub-Inspector placed below him in the seniority list, his promotion shall be considered with effect from the date of promotion of his junior in case he had fulfilled minimum eligibility criteria for promotion at the time of consideration of his junior". The first part of the order contained in paragraph 9 as already explained hereinabove has attained finality, thus, does not require any interference. The High Court is requested to decide the case to that extent only taking into consideration the law as explained hereinabove including the issue of delay and the facts involved in that case expeditiously.

H 35. The appeals stand disposed of accordingly. No cost.
K.K.T. Appeals disposed of.