

A.F.R.

Reserved

Neutral Citation No. - 2025:AHC-LKO:11761

(1) Case :- WRIT - A No. - 9193 of 2023

Petitioner :- Shiv Datt Joshi And 2 Others

Respondent :- State Of U.P. Thru. Addl. Chief Secy./ Prin. Secy.,
Secretariat Administration Dept. Lko And Others

Counsel for Petitioner :- Rani Singh, Gaurav Mehrotra, Ritika
Singh

Counsel for Respondent :- C.S.C., Akhilesh Kumar
Kalra, Jyotiresh Pandey, Pooja Singh, Rajesh Chandra
Mishra, Santosh Kumar Misra, Varadraj Shreedutt Ojha

with

(2) Case :- WRIT - A No. - 5381 of 2024

Petitioner :- Sanjeev Kumar Sinha And 2 Others

Respondent :- State Of U.P. Thru. Addl. Chief Secy./Prin. Secy.
Secretariat Administration Deptt. And 10 Others

Counsel for Petitioner :- Gaurav Mehrotra, Harsh Vardhan
Mehrotra, Jai Narayan Pandey, Ritika Singh

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur, J.

1. Heard Sri Gaurav Mehrotra assisted by Ms. Ritika Singh, learned counsel for the petitioners as well as Sri Kuldeep Pati Tripathi, learned Additional Advocate General for respondent nos. 1, 2 and 3 as well as Sri Akhilesh Kumar Kalra, learned counsel appearing for the private respondents.
2. Since common questions of law and facts are involved in both the writ petitions, as such, they are being decided by this common judgment and order.
3. The dispute regarding seniority between the direct recruits and the promotees once again falls for consideration in the bunch of writ petitions which have been filed by the promotees assailing the order dated 06/08/2023 by which the date of appointment has been changed from 30/06/2016 to 13/07/2016 and the subsequent seniority list issued on 06/09/2023 whereby they have been

pushed back in the seniority and the further promotion orders where according to the petitioners the direct recruits who were junior to them have been granted promotion.

4. The brief facts of the case are that the petitioners of writ petition A No. 9193/23 were appointed on the post of Junior Grade clerk in the Secretariat Administration Department in 1990 and on account of their seniority were promoted to the post of Assistant Review Officer in 2005. After satisfactory performance of the post of Assistant Review Officer and also serving for the substantial length of time they became eligible to be promoted to the post of Review Officer. The exercise for the promotion of petitioners commenced by issuance of letter dated 27/06/2016 written by the Secretary, Secretariat Administrative Department, Government of U.P to the Secretary, Uttar Pradesh Public Service Commission asking him to convene the meeting of the selection committee for the purposes of conducting selections for the vacant and newly created posts of Review Officers in the promotion quota for the selection year 2015–16. It was further emphasised that the process may be concluded by 30th June 2016 so that the promotions can be made within the selection year.
5. In pursuance of the aforesaid directions, the Departmental Promotion Committee conducted its meeting on 30/06/2016 and intimated the results of the same to the State Government, and the matter was thereafter sent to the Uttar Pradesh Public Service Commission for its approval 08/07/2016. After receiving the approval of the U.P Public Service Commission order to promote of 144 persons were issued on 13/07/2016 with effect from 30/06/2016. It was further provided that the persons promoted by the said order would be kept on probation for a period of 2 years and the seniority in the cadre of Review Officer would be considered separately.

6. In order to prepare the seniority list of the cadre of Review Officers, a tentative seniority list was issued on 23/07/2016 inviting objections as per the provisions contained in U.P Government Servant Seniority Rules, 1991. Several objections were received from the direct recruits of 2013 batch with regard to grant of promotion of the petitioners with effect from a back date. To consider the objections received with regard to the tentative seniority list a three-member committee was constituted consisting of the Special Secretary, Food and Logistic Department, Special Secretary/Assistant Legal Adviser, Law and Legislative Department and Special Secretary, IRLA Secretariat. The committee duly considered the objections received with regard to the promotion of the petitioners on the post of Review Officers with effect from 30/06/2016 and rejected all the objections and the final seniority list was published on 05/08/2016.
7. The seniority list of the cadre of Review Officers was sought to be prepared afresh for which purposes/provisional seniority list was issued on 18/08/2018 inviting objections. Again, number of objections were raised by the direct recruits of 2013 batch with regard to date of appointment of the petitioners. To consider the objections a 4 member committee was constituted consisting of Special Secretary, Department of Personnel, Special Secretary, Secretariat Administration, and one retired special Secretary was also included. The objections were duly considered and rejected, and a finding was given in favour of the petitioners upholding the seniority given to them with effect from 30/06/2016. The final Seniority list was published on 03/04/2019.
8. It submitted that again for the third time the exercise for finalising the seniority list of the post of Review Officers was undertaken and a tentative seniority list was issued on 15/07/2022. Again, objections were invited, and the objections against the grant of promotion to the petitioners with effect from 30/06/2016 was

considered and rejected and the final seniority list was issued on 11/08/2022.

9. After revising the seniority list on 3 occasions and consistently upholding the grant of promotions of the petitioner with effect from 30/06/2016, the State Government sought to reconsider the issue of grant of promotion of the petitioners on the post of Review Officer from the back date. It was realised that the said promotions effected from a back date was erroneous and against the rules. It was noticed that the Departmental Promotion Committee was conducted on 30/06/2016, and the approval was given by the U.P. Public Service Commission on 08/07/2016 and the promotion orders were issued on 13/07/2016 wherein it was stated that the same would be effective from 30/06/2016. Accordingly, notice dated 14/07/2023 was issued, recording the aforesaid facts, and required the petitioners to respond to the same within a period of 7 as to why their promotions be made effective from 13/07/2016 rather than from the back date of 30/06/2016.
10. The petitioners submitted the reply stating that the decision was taken by the government to make the promotions to post of Review Officers within the selection year 2015 –16. The petitioners, who were eligible for promotion, had made repeated representations requiring the respondents to constitute the departmental promotion committee and proceed with promoting the petitioners who at the relevant time were working on the post of Assistant Review Officers. It is on the repeated representations made by the petitioners that the respondents required that the process of promotion be concluded before the expiry of the recruitment year i.e by 30/06/2016, and this fact was clearly mentioned in the letter dated 27/06/2016 where the U.P. Public Service Commission was required to conduct the exercise and conclude the same so that the promotions could be made within the recruitment year itself. It was further contended that this

aspect of the matter has been considered and decided at the time of finalisation of the seniority list by committees constituted to consider the objections. It was further stated that the promotions from a back date would not be illegal, arbitrary or contrary to the rules in as much as Rule 8 of the Seniority Rules of 1991 clearly provides that promotions can be made from a back date.

11. The respondents rejected the objections made by the petitioners and by means of order dated 09/08/2023 modified the promotion order of the petitioners dated 30/06/2016 and provided that their promotion would be effective from the date of the passing of the order dated 13/07/2016 itself. While taking the aforesaid decision they relied upon the judgement of the Supreme Court in the case of ***P. Sudhakar Rao and others vs U. Govind Rao and others*** in civil appeal No. 1712 – 1713/2002 where it was held “*We are also of the view that no retrospective promotional or seniority can be granted from the date when employee is not even been born in the cadre...*“
12. It was further observed that the U.P Public Service Commission in its approval had not recommended grant of promotion from the back date i.e 30.06.2016 and no such rule was quoted in the order granting them the said benefit and consequently the same was contrary to the rules and hence the order dated 13/07/2016 was amended on the substantive appointment was to be considered from the date of the order itself.
13. On amending the promotion order of the petitioners, the respondents again circulated a tentative seniority list on 10/08/2023 downgrading the seniority of the petitioners and inviting objections. The petitioners again submitted their objections against the tentative seniority list and supported the grant of seniority from 30/06/2016 and by order dated 06/09/2023 their objections were rejected on the final seniority list was published.

14. It has further been submitted that a departmental promotion committee was convened on 08/09/2023 and the direct recruits who were placed junior to the petitioner in the previous seniority lists dated 05/08/2016, 03/04/2019 and 11/08/2022 has been promoted to the post of Section Officer.

15. Aggrieved by the aforesaid exercise conducted by the respondents, two writ petitions have been filed. Writ petition A No. 9193 of 2023 (*Shiv Dutt Joshi and others vs State of U.P and others*) has been filed by those persons who were granted seniority with effect from 30/06/2016 which order was modified on 09/08/2023 and they were downgraded in the fresh date of the promotions was 13/07/2016 which means there was a change in their selection year, and consequently they became junior to the persons who were appointed in the selection year 2015-16 and have been kept below them. They have prayed for the following prayers:-

(i) issue writ, order or direction in nature of certiorari quashing the impugned promotion order dated 25/10/2023 copy whereof is annexed as Annexure-3 to this writ petition.

(ii) To issue writ, order or direction in nature of certiorari quashing the impugned office memo dated 06/09/2023 issued by respondent No. 2, copy thereof is annexed as Annexure 1 to this writ petition.

(iii) To issue writ, order or direction in nature of certiorari quashing the impugned order dated 09/08/2023 issued by respondent No. 3 copy whereof is annexed as Annexure 2 to this writ petition.

(iv) To issue writ, in nature of mandamus commanding the respondent authorities not to give effect to the impugned promotion order dated 25/10/2023 against the petitioners

(v) to issue a writ order or direction in nature of mandamus commanding the respondent authorities not to give effect to the impugned office memo dated 06/09/2023 against the petitioners.

(vi) To issue writ order or direction in nature of mandamus commanding the respondent authorities not to give effect to the impugned order dated 09/08/2023 against the petitioners.

(vii) Such other writ, order so as to protect the rights and interests of the petitioner.”

16. The 2nd writ petition which is numbered as writ petition A No. 5381 of 2024 (*Sanjeev Kumar Sinha and 2 others vs state of U.P and others*) has been filed by persons who were appointed on the post of Typist in 1999 through direct recruitment and promoted to the post of Assistant Review Officer in 2013, and further promoted to the post of Review Officer on 22/02/2017. They were confirmed on the said post on 22/02/2019 / 23/02/2019 and duly placed in the seniority list which was published on 11/08/2022. They are also aggrieved by the seniority list published on 06/09/2023 whereby they have been placed below the direct recruits of 2013. They have prayed for the following reliefs :-

(I) to issue a writ order or direction in the nature of certiorari quashing the impugned office memo dated 06/09/2023 (containing the impugned final seniority list and the impugned rejection orders) issued by respondent No. 2 copy where of his next as Annexure-I to this writ petition.

(ii) To issue a writ, Order or direction in the nature of mandamus commanding the respondent authorities not to give effect to the impugned office memo dated 06/09/2023 against the petitioners.

(iii) To pass such other writ, order or direction as the Hon'ble court may deem fit and proper research to protect the rights and interests of the petitioner.”

17. The genesis of the controversy in the present case has its roots in the decision of the State government dated 09/08/2023 whereby they have altered and substantially modified the order dated 13/07/2016 by which 144 persons who were promoted to the post

of Review Officer and provided that the said promotion shall be effective from 13/07/2016 itself rather than from a back date i.e 30/06/2016. Accordingly, the date of promotion of 144 such persons including the petitioners would now be 13/07/2016 rather than 30/06/2016.

18. This order adversely affects the seniority of 144 persons including the petitioner. The U.P Secretarial Ministerial Service Rules, 1999 provides that “year of recruitment means a period of 12 months commencing from 1st of July of the calendar year, and therefore persons recruited in a particular recruitment year, would be senior to the persons appointed in the subsequent recruitment year. Therefore, by passing of the impugned order dated 09/08/2023 the recruitment year of the petitioners on the post of Review Officer becomes 2016-17 rather than 2015-16.
19. The petitioners were working on the post of Assistant Review Officer had made various representations for their promotion to the post of Review Officer. It was contended that they were fully eligible to be promoted but for certain reasons the departmental promotion committee could not be constituted due to which their case for promotion could not be taken up and prayed for constitution of the DPC so that they could be promoted in the recruitment year 2015-16 itself. The State duly considered a request and wrote to the U.P Public Service Commission on 27/06/2016 for constitution of a departmental promotion committee and completion of the exercise for promotion within the recruitment year itself i.e by 30/06/2016. It is stated that the intention of the State Government was very clear from the very beginning which was to make the promotions in the recruitment year 2015-16 itself for which purpose the DPC was constituted and convened its meeting on 30/06/2016, and its recommendations were forwarded to the U.P Public Service Commission for its approval. The approval was granted on 08/07/2016, and the promotion orders were issued on 13/07/2016.

The promotion orders dated 13/07/2016 provided that the promotion of the petitioner would be from with effect from 30/06/2016. The date 30/06/2016, is relevant and important considering the fact that it was the last day of the recruitment year, and all recruitment/promotions made from 01/07/2015 to 30/06/2016 would be senior to any recruitment or promotion made after 30/06/2016.

20. The private respondents who are direct recruits on the post of Review Officer of 2013 batch were appointed in 2015-16 and are entitled to be granted seniority in the said recruitment year have vehemently urged that the petitioners have been illegally and arbitrarily given promotions to the post of Review Officer with effect from 30/06/2016 despite the fact that the orders were promotion were passed on 13/07/2016 and could not have been made effective from the date when the petitioners were not even born in the cadre. It was further stated that the date of promotion cannot be antedated and the same is contrary to the settled legal proposition as observed by the Supreme Court in number of cases. As the petitioners were deemed to have been promoted on the post of Review Officers with effect from 30/06/2016 and hence they were entitled to be considered for grant of seniority in the recruitment year 2015-16 and were placed senior to them according to the provisions of U.P Government Servant Seniority Rules of 1991. The direct recruits have been raising their grievance repeatedly since the appointment of the petitioners, and on 3 occasions objections were invited on the tentative seniority list, where they have raised their objections but the same was rejected till passing of the impugned order dated 09/08/2023 and preparation of a fresh notice list pushing down the petitioners and placed under the private respondents were direct recruits of 2013 batch.
21. The petitioners while assailing the order dated 09/08/2023 have submitted that the change of date in their promotion order and

downgrading them in the seniority list and placing them below the direct could not be unsettled after a long period of 7 years, especially considering the fact that on 3 occasions the State government had duly considered and approved the grant of promotion to the petitioner on the post of Review Officer with effect from 30/06/2016.

22. It was further submitted that once the State Government had repeatedly ratified its decision with regard to the date of promotion of the petitioners by rejecting the objections made by the private respondents, then the decision could not have been reversed stating that the initial decision was contrary to the rules. It was stated that the decision taken by the State government had attained finality and could only be reversed by a judicial order and principles of res judicata would be applicable.

23. Assailing the impugned orders, it was urged on behalf of the petitioners that some of the private respondents had approached this court challenging the decision taken favour of the petitioner is with regard to the seniority by filing writ petition. Petitioner No. 3717 of 2017 (Naveen Kumar and others vs state of up and others) which was pending consideration, and during pendency of the petition the State Government arrogated to itself the adjudicatory function and reversed their previous decision which is clearly illegal arbitrary and without jurisdiction.

24. On merits of the decision, it was submitted that promotion of the petitioners on the post of Review Officer was made with effect from 30/06/2016 after due consideration and deliberation by the State which is discernible and evident from the letter dated 27/06/2016 addressed to the U.P Public Services Commission requested them to conclude the promotion exercise within the recruitment year i.e by 30/06/2016 . The departmental promotion committee duly met and considered the candidature of the petitioners on 30/06/2016, and the ministerial task of approvals

was conducted subsequently. It was therefore submitted that the promotions have a direct correlation with the date of promotion from a prior date which is not illegal arbitrary. It was further submitted that providing promotion from a back date is not contrary or alien to the provisions of U.P Government Servant Seniority Rules, 1999 in as much as the proviso to rule 8 clearly provides for the same. It was further submitted that the reliance of the judgement of the Supreme Court considered in the impugned order is distinguishable and the injunction of the Supreme Court was only with regard to promotions being made from the date of occurrence of vacancies which was not the case of the petitioners and accordingly the respondents have misdirected themselves by relying on the dictum of the Supreme Court which does not apply to the facts of the present case, and accordingly the entire exercise is illegal and arbitrary and deserves to be set aside.

25. On behalf of the petitioners it was also submitted that objections were filed by the petitioners against the notice given by the State for a change in the date of promotion, and in the said objections various points were raised none of which were considered by the respondents while rejecting the representation, and the respondents acted in the predetermined manner which is evident from the show cause notice itself, and accordingly on this ground have assailed the validity of the impugned orders.

26. The State government has opposed the writ petition. Sri Kuldeep Pati Tripathi, Learned Additional Advocate General has submitted that several representations were received from a direct recruits of 2013-14 batch where it was stated that retrospective promotion could not have been granted to the petitioners and the issue was examined by the State government and it is found that The Departmental Promotion Committee duly considered the case of the petitioners on 30/06/2016 after which the approval of the U.P Public Services Commission 08/07/2016 and have accordingly submitted that the promotions could not have been made prior to

the approval sought from the U.P Public Service Commission, and even the public service commission had not recommended the promotions of the petitioner from 30/06/2016.

27. It was further submitted that inadvertently the promotions of the petitioners under the promotion quota have been made effective since 30/06/2016. Further submitted that the State Government realised that there has been a mistake in the date of promotion of the petitioners which was sought to be rectified by giving an opportunity of hearing to the petitioners and only thereafter the order dated 13/07/2016 was modified on 09/08/2016. It was vehemently urged that the State has sufficient power to modify and correct any order in case it comes to its notice that any order passed by them is illegal or contrary to rules. In the present case it was stated that after giving due opportunity of hearing the illegal order dated 13/07/2016 has been appropriately modified.

28. An application for impleadment was filed by respondents No. 12-22 stating that they had preferred a special appeal against the interim order dated 14/12/2023 passed by this court in writ petition No. 9193 of 23 which was disposed of by order dated 09/01/2024 after recording the statement of the Counsel of the appellant that they shall file an application for impleadment before the writ Court and further give liberty to the writ Court to consider the same and passed necessary orders as if there is no objection raised by the petitioners against the same. The application for impleadment was allowed on 02/07/2024, and a detailed counter affidavit was filed opposing the claim made by the petitioners.

29. Considering the rival contentions with regard to the 1st issue raised by the petitioners that the State government did not have any power to unsettle the settled seniority list, and specially the fact that on 3 occasions they had proceeded to consider and reject the objections filed by the private respondents, they could not

have reviewed or taken a different stand subsequently the absence of any specific provision in this regard.

30. The State respondents on the other hand is submitted that there is no limitation prescribed in the rules of 1999, and at the stage of deciding the objections to the tentative seniority list the State was within its competence to decide the objections raised and pass appropriate orders. It was also submitted that in case any error is discovered in the exercise of their administrative power, then they have full opportunity to rectify the same and there is no restriction in exercise of such power and accordingly sought to justify the impugned orders.
31. In the present proceedings this Court has been called upon to adjudicate on the validity of the seniority list dated 06/09/2023 specially light of the fact that the inter-se seniority of the petitioners and the private respondents has been determined in light of provisions of rule 8 of seniority rules of 1999 on 3 different occasions on 05/08/2016, 03/04/2019 and 11/08/2022 where the contentions of the petitioner was accepted, and the grounds assailing the seniority of the petitioners was rejected after duly considering the submissions of the parties and affording them an opportunity of hearing.
32. To decide this controversy we will have to look into the nature of the power exercised by the State at the stage of preparation of the seniority list as to whether it is in the exercise of administrative power which can be used repeatedly and stands from a different footing from the power of administrative decision-making which may be subjected to restrictions akin to quasi-judicial making power or judicial power.
33. Administrative action can be divided into two broad classes. On the one hand is the ministerial action where the reasoning processes is minimum and almost routine. Along with this may also be grouped exercise of discretionary power where the

administrative authorities are able to choose alternative course of action. On the other hand, the administrative decision the process in which a decision is taken on objective standard of determination of which opinions may differ. The reasoning process takes into account the rival contentions and then comes a decision. This distinction is important because an administrative action is always reviewable while an administrative decision is the reviewable in special circumstances. Another distinction is between the essential revocability of an administrative act and the finality or conclusiveness of judicial or quasi a judicial decision. A judicial decision is res judicata between the parties and it is for this reason it is not only the parties who cannot reopen the said decision but even the judicial authority which made the decision is prevented from reviewing it on merits. On the other hand an administrative decision which is not based on a dispute between 2 parties and which has not given after hearing the parties does not operate as res judicata. (*de Smith's, judicial review of administrative action 4th Edition PP 106-108*)

“consideration of fairness to individuals whose interest will otherwise be directly and prejudicially affected may lead the Courts to attribute binding effect to administrative acts and decisions which the competent authority wishes to repudiate or rescind. Indeed, it would seem that the legal competence of administrative bodies to rescind the decisions depends (in the absence of statutory provision for this matter) at least as much on considerations of equity in public policy as on-conceptual classification.”

34. The seniority is determined in exercise of powers conferred under rule 9 of the U.P Government Servant to Seniority Rules, 1991. Rule 9 of the seniority rules is quoted here under:-

Part III: Determination of Seniority

Seniority List

Preparation of seniority list.- (1) As soon as may be after appointments are made to a service, the appointing authority shall prepare a tentative

seniority list of the persons appointed substantively to the service in accordance with the provisions of these rules.

(2) The tentative seniority list shall be circulated amongst the persons concerned inviting objections by a notice of reasonable period, which shall not be less than seven days from the date of circulation of the tentative seniority

(3) No objections against the vires or validity of these rules shall be entertainable.

(4) The appointing authority shall after disposing off the objection, by a reasoned order, issue a final seniority list.

(5) It shall not be necessary to prepare a seniority list of the cadre to which appointments are made only by promotion from a single feedings cadre.

35. At the stage of preparation of tentative seniority list have to be prepared and circulated inviting objections from the affected parties. The tentative seniority list serves as a purpose of notice all the parties may be adversely affected who have a right to canvass their objections, and the appointing/competent authority is mandated to decide the objections by a reasoned order. Undoubtedly, the seniority list has to be prepared in accordance with other provisions of the rules of 1991 where part II deals with determination of seniority depending upon whether seniority list consists only of direct recruits or promotees where provisions of rule 5-7 have to be followed, while in case the seniority list consist both of promotees and direct recruits the provisions of rule 8 have to be followed. The perusal of the aforesaid provisions it is clearly borne out that the determination of seniority has to be made after due application of mind to the objections filed by the affected persons, and after considering the relevant rules the appointing authority has to pass a reasoned and speaking order for deciding the objections. Accordingly, we have no hesitation to hold that the procedure prescribed in the rules amounts to an administrative decision by the appointing authority

and law, rules and prescription would apply to such a decision-making process.

36. Therefore, once the objections are decided and the final seniority list have been published, it is acted upon by the authorities to give promotion or any other service benefit linked to the seniority of such Government servants. A vested right is created by issuance of the seniority list in as much as a government servant acquires a right to be considered for promotion in case any person lower in the seniority list is promoted, similarly he can claim parity in pay scale and other service benefits based on seniority. The rules does not empower the appointing authority to review his decision, nor is there any provision of filing an appeal against the final seniority list. Accordingly, finality is attached to the final seniority list considering the fact that the same has been passed after giving due opportunity of hearing to the concerned parties deciding the objections by reasoned and speaking order and therefore has partaking of a quasi-judicial order. Any person who is aggrieved by the final seniority list has to approach either the U.P Public Services Tribunal or prefer a writ petition before the High Court assailing the same.

37. After publishing of the final seniority list whether the State Government on its own can review the seniority list specially where no statutory provision or rule has been made in this regard deserves to be considered.

38. In the case of **Haryana State Industrial Development Corporation Ltd. v. Mawasi and others** reported as AIR SCW 2012, 4222 it was held:-

9. At this stage it will be apposite to observe that the power of review is a creature of the statute and no Court or quasi-judicial body or administrative authority can review its judgment or order or decision unless it is legally empowered to do so. Article 137 empowers this Court to review its judgments subject to the provisions of any law

made by Parliament or any rules made under Article 145 of the Constitution.

39. In the present case soon after the promotions of the petitioner to the post of Review Officer were made objections were invited to the tentative seniority list where the petitioners were placed in the seniority list higher than the direct recruits of 2013 batch. The objections were duly placed before the committee which submitted its recommendations in favour of the petitioner, which were accepted by the Government and the final seniority list was published on 05/08/2016. Considering the objections raised against the seniority granted to the petitioners it was held that the petitioners have not been granted seniority from the date of the vacancy. It was further stated that the selection of the petitioners also pertains to recruitment year 2015-16 and there is no infirmity in giving them seniority considering them to have been promoted in the selection in the recruitment year 2015-16.
40. The exercise of preparation of seniority list was again conducted by inviting objections to the tentative seniority list on 18/08/2018. This exercise was conducted on account of the judgement of the Supreme Court in the case of **U.P Power Corporation Ltd. Vs Rajesh Kumar** passed in civil appeal number 02608/11 decided on 27/04/2012 where rule 8 of the Seniority Rules, 1991 was held to be ultra virus the Constitution. Objections were raised again by the direct recruits of 2013-14 batch against the placement of seniority of the petitioners. The objections were referred to committee for its consideration, and personal hearing was also afforded to the affected parties on 04/09/2018 and 05/09/2018 and submitted its recommendations by detailed and speaking order on 27/03/2019. Again, the objections of the direct recruits of 2013-14 batch against the seniority of the petitioners was considered and rejected and no infirmity was found in their placement of the petitioners in the seniority list.

41. This exercise was conducted on the 3rd occasion in pursuance of directions issued in special appeal in the case of Kishore Tandon the tentative seniority list was issued on 15/07/2022 and objections were received, and final seniority list deciding the objections was issued on 11/08/2022. While deciding the objections given by the direct recruits against the petitioners it was noticed that a writ petition was pending before the Lucknow bench of the High Court. Petitioner No. 3717 of 2017 in the case of Naveen Kumar and others vs State of UP and others, and consequently in light of the pendency of the aforesaid proceedings it was thought not to interfere with the seniority list and also the objections decided previously.
42. The State government on 3 occasions as discussed hereinabove maintained its decision to the effect that the grant of seniority to the petitioners with effect from 30/06/2016 was correct and the State consistently rejected the objections raised by the direct recruits of 2013-14 batch. We also notice that due opportunity of hearing was given to the parties at the stage of deciding the objections and the reasons have been disclosed in all the orders. Accordingly, it was a reasoned decision after hearing all the parties, and accordingly this Court has no hesitation in holding that it has all the trappings of a quasi-judicial proceeding, and the State government was denied of its powers to embark to review of the order dated 13/07/2016 and the subsequent seniority list on merits at the subsequent stage.
43. The reason for preparation of the impugned seniority list is the order dated 09/08/2023 issued by Joint Secretary, Secretarial Administration Department whereby on re-examination of the issue pertaining to the promotion of the petitioners specially the date from which the promotions have been given effect, was found to be erroneous and contrary to the rules, and consequently a decision was taken to amend the effective date of promotion to date on which the order was passed which is 13/07/2016.

44. The principle of res judicata is species of the principle of estoppel. When a proceeding based on a particular cause of action has attained finality, the principle of res judicata shall fully apply.

45. Reference in this regard may be made to Wade and Forsyth on Administrative Law, 9th Ed., pg. 243, wherein it is stated:

"One special variety of estoppel is res judicata. This results from the rule which prevents the parties to a judicial determination from litigating the same question over again even though the determination is demonstrably wrong. Except in proceedings by way of appeal, the parties bound by the judgment are estopped from questioning it. As between one another they may neither pursue the same cause of action again, nor may they again litigate any issue which was an essential element in the decision. These two aspects are sometimes distinguished as 'cause of action estoppel' and 'issue estoppel'. Law on res judicata and estoppel is well understood and there are ample authoritative pronouncements by various courts on these subjects. As noted above, the plea of res judicata, though technical, is based on public policy in order to put an end to litigation. It is, however, different if an issue which had been decided in an earlier litigation again arises for determination between the same parties in a suit based on a fresh cause of action or where there is continuous cause of action. The parties then may not be bound by the determination made earlier if in the meanwhile, law has changed or has been interpreted differently by a higher forum..."

46. In 'The Doctrine of Res Judicata' 2nd Edition by George Spencer Bower and Turner, it is stated :

"A judicial decision is deemed final, when it leaves nothing to be judicially determined or ascertained thereafter, in order to render it effective and capable of execution, and is absolute, complete, and certain, and when it is not lawfully subject to

subsequent rescission, review, or modification by the tribunal which pronounced it...."

47. In **Swamy Atmananda and Ors. v. Sri Ramakrishna Tapovanam**

and Ors., JT (2005) 4 SC 472 The Supreme Court observed:-

"The object and purport of principle of res judicata as contained in Section 11 of the Code of Civil Procedure is to uphold the rule of conclusiveness of judgment, as to the points decided earlier of fact, or of law, or of fact and law, in every subsequent suit between the same parties. Once the matter which was the subject-matter of lis stood determined by a competent court, no party thereafter can be permitted to reopen it in a subsequent litigation. Such a rule was brought into the statute book with a view to bring the litigation to an end so that the other side may not be put to harassment.

48. The principle of res judicata envisages that a judgment of a court of concurrent jurisdiction directly upon a point would create a bar as regards a plea, between the same parties in some other matter in another court, where the said plea seeks to raise afresh the very point that was determined in the earlier judgment."

49. It was further noticed:

"In Ishwardas v. the State of Madhya Pradesh and Ors., AIR (1979) SC 551, the Supreme Court held:

"...In order to sustain the plea of res judicata it is not necessary that all the parties to the two litigations must be common. All that is necessary is that the issue should be between the same parties or between parties under whom they or any of them claim..."

50. Yet again in **Arnold v. National Westminster Bank Plc., [1991] 3 ALL ER 41**, the House of Lords noticed the distinction between cause of action estoppel and issue estoppel. Cause of action estoppel arises where the cause of action in the later proceedings

is identical to that in the earlier proceedings, the latter having been between the same parties or their privies and having involved the same subject-matter. In such a case, the bar is absolute in relation to all points decided unless fraud or collusion is alleged, such as to justify setting aside the earlier judgment. The discovery of new factual matter which could not have been found out by reasonable diligence for use in the earlier proceedings does not, according to the law of England, permit the latter to be reopened. Issue estoppel may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant, one of the parties seeks to reopen that issue. Here also bar is complete to relitigation but its operation can be thwarted under certain circumstances.

51. Accordingly in light of the aforesaid discussion this court of the considered view that once the issue pertaining to promotion of the petitioners with effect from 30/06/2016 was determined and the seniority list was also prepared taking this fact into account, and further on 2 other occasions namely on 03/04/2019 and 11/08/2022 where same issue was again decided and reiterated, the said decision at in finality, and the respondents were estopped from reconsidering and deciding the same issue yet again by impugned order dated 09/08/2023. The argument in this regard made by the respondents is accordingly rejected.

52. On perusal of the U.P Government Servant Seniority Rules, 1991, we find that there is no provision for review of the final seniority list which has been once prepared after following the procedure prescribed under rule 5, meaning thereby that once a final seniority list has been issued after deciding the objections filed by the concerned parties against the tentative seniority list, finding authority becomes functus officio and does not retain any power to repeatedly exercise the same power to redetermine the

seniority between the same group of persons again and again. The doctrine of *functus officio* exists to provide a clear point where the adjudicative process ends and to bring *quietus* to the dispute. Without it, decision-making bodies such as courts could endlessly revisit their decisions. With a definitive endpoint to a case before a court or quasi-judicial authority, parties are free to seek judicial review or to prefer an appeal. Alternatively, their rights are determined with finality. Similar considerations do not apply to decisions by the state which are based entirely on policy or expediency. In the matter of *Lalit Narayan Mishra vs. State of Himachal Pradesh and others, 2016 SCC OnLine HP 2866*, Division Bench of Himachal Pradesh High Court has held that "Functus officio" is a Latin term meaning having performed his or her office. With regard to an officer or official body, it means without further authority or legal competence because the duties and functions of the original commission have been fully accomplished. "Functus" means having performed and "officio" means office. Thus, the phrase *functus officio* means having performed his or her office, which in turn means that the public officer is without further authority or legal competence because the duties and functions of the original commission have been fully accomplished.

53. Trayner's Latin Maxims, 4th Edn. gives the expression *functus officio* the following meaning a "*person having discharged his official duty*". This is said of anyone holding a certain appointment, when the duties of his office have been discharged. Thus a Judge, who has decided a question brought before him, is *functus officio* and cannot review his own decision. In Wharton's Law Lexicon, 14th Edn., the expression *functus officio* is given the meaning: "*a person who has discharged his duties, or whose office or authority is at an end.*" P. Ramanatha Aiyar's Law Lexicon gives the expression the meaning: "A term applied to something which once has had a life and power, but which has

become of no virtue whatsoever. Thus when an agent has completed the business which he was entrusted his agency is functus officio."

54. In Black's Law Dictionary Tenth Edition, meaning of functus officio is: "having performed his or her office (of an officer or official body) without further authority or legal competence because the duties and functions of the original commission have been fully accomplished." In other words, the authority, which had a life and power, has lost everything on account of completion of purpose/activities/act.
55. There may be occasions to redraw the seniority list, to include or exclude certain groups or persons from the seniority list, as per judicial determination, or some other fortuitous circumstance making the said exercise necessary, but with regard to the objections once decided while preparing the seniority list, cannot be reopened subsequently. This reasoning has been arrived at after considering the fact that the appointing authority is exercising quasi-judicial powers of determination of seniority and his actions would be subject to the same limitations as that of a judicial/quasi judicial authority, and once he takes a decision it would be final subject to review only where a prescription is specially made in this regard.
56. It was also contended on behalf of the petitioners that against the seniority list issued on 05/08/2016 and 18/05/2022 two writ petitions were filed by the direct recruits of 2013-14 batch assailing the placement of the petitioners above them in the seniority list on the ground that they have been given benefit of promotion on the post of Review Officer with effect from 30/06/2016. These writ petitions are Naveen Kumar and 12 others vs State of U.P and others as well as writ petition No. 3717 of 2017 Writ Sangeeta Mishra and 86 others versus State of up and

others writ petition no. 5909 of 2022 Writ-A were pending before this court on the date the impugned orders were passed.

57. It is further relevant to take note of the fact that when the tentative seniority list was published on 15/07/2022 inviting objections, and again the direct recruits of 2013-14 had filed their objections against the benefit of appointment given to the petitioners with effect from 30/06/2016 and the matter was placed before a committee to consider all the objections and the committee after consulting the Department of Personnel took cognizance of the fact writ petition No. 3717 of 2017 (Naveen Kumar and others versus State of up and others) was pending and that the same issue is sub-judice before the High Court in the said circumstances it was decided not to pass any orders on the objections. The recommendations of the committee were duly accepted by the State government and the seniority listed 11/08/2022 was published. Despite taking a decision to wait for the judgement of the High Court, no reason has been indicated for the sudden reversal of their own decision and to proceed to pass a fresh order. In the peculiar circumstances it would have been proper for the State to have awaited the outcome of the judicial verdict and at least record reasons for sudden need to revisit the entire issue without waiting for the outcome of the writ petitions pending in the High Court.

58. Shri Gaurav Mehrotra, learned counsel for the petitioner has submitted that the impugned order dated 09/08/2023 has been passed incorrectly relying on the Judgment of the Supreme Court in the case of **P. Sudhakar Rao vs U. Govind Rao** (2013) 8 SCC 693. It was submitted that the entire basis of the impugned order is arbitrary and on incorrect appreciation of facts and law. The said case was with regard to claiming seniority by the direct recruits from the date of occurrence on the vacancy on which they were appointed. The Supreme Court relied upon the judgement in the case of **N.K. Chauhan vs State of Gujarat** (1977) 1 SCC

308 and held that direct recruits cannot claim deemed date of appointment for seniority with effect from the time when direct recruitment vacancy arose. Seniority depends upon length of service. Learned counsel for the petitioner has submitted that the said judgement is distinguishable on facts in as much as the petitioners herein are not claiming seniority from the date of occurrence of the vacancy.

59. It was further submitted case of *P. Sudhakar Rao vs U. Govind Rao* the Hon'ble Supreme Court had also considered the judgement in the case of *Pawan Pratap Singh vs Reevan Singh (2011) 3 SCC 267* where the Hon'ble Supreme Court itself as held that that ordinarily, notional seniority may not be granted from a back date and if it is done, it was based on objective considerations and order a valid classification and was be traceable to the statutory rules. It was accordingly submitted that all the conditions prescribed by the Supreme Court stands fulfilled in the instant case and accordingly, the respondents without considering the aforesaid judgement of the Supreme Court in the correct perspective have merely relied upon a portion of the said judgement without correctly appreciating the context in which the same was stated.

60. The learned counsels appearing for respondent while opposing the plea of the petitioner have supported the impugned orders and submitted that they have regularly been making representations against the illegal and arbitrary appointment orders issued to the petitioners with effect from a back date. It was submitted that neither do the rules support such an order of appointment from a back date, nor is there any reasonable consideration on the basis of which such order could have been passed merely to benefit the petitioners to be deemed to have been recruited in the recruitment year 2015-16.

61. Considering the rival submissions, the question which falls for consideration is as to whether the State could have validly appointed the petitioners by order dated 13/07/2016 with effect from 30/06/2016?
62. As per the undisputed facts the petitioners were working on the post of Assistant Review Officers and were to be promoted to the post of Review Officer. The exercise commenced by writing a letter to the Secretary, Uttar Pradesh Public Services Commission on the 07/06/2016 where it was clearly stated that the meeting of the departmental promotion committee be conducted in such a way that the recommended personnel can be promoted before 30/06/2016 that is in the selection year 2015-16.
63. Accordingly the Departmental Promotion Committee was constituted and held its meeting on 30/06/2016 which is the last day of the selection year, and made its recommendations to the Government, and subsequently according to the rules approval was sought from the U.P Public Service Commission, which was granted by letter dated 08/07/2016 and orders were promotion were passed on 13/07/2016 making it effective from 30/06/2016.
64. The U.P Government Servant Seniority Rules, 1991 provides for determination of seniority where appointments are made by promotion as well as by direct recruitment, which are quoted hereinbelow for sake of convenience:-

Seniority where appointments by promotion and direct recruitment.- (1) *Where according to the service rules appointments are made both by promotion and by direct recruitment, the seniority of persons appointed shall, subject to the provisions of the following sub-rules, be determined from the date of the order of their substantive appointments, and if two or more persons are appointed together, in the order in which their names are arranged in the appointment order:*

Provided that if the appointment order specifies a particular back date, with effect from which a person is substantively appointed, that date will be deemed to be the date of order of

substantive appointment and, in other cases, it will mean of issuance of the order :-

.....

65. In the appointment letter dated 13/07/2016 it been mentioned in pursuance of the recommendations of the Departmental Promotion Committee and after consulting the Public Service Commission promotions are being made on the substantive post of Review Officers with effect from 30/06/2016. There is no mention of the fact that the appointments have been made from the date of occurrence of the vacancy in the cadre of Review Officer, nor has a date 13/07/2016 any correlation with the date of occurrence of vacancy in the cadre of Review Officer. In the case of **P.Sudhakar Rao and others vs U. Govind Rao and others** the Supreme Court was considering the issue as to whether any retrospective seniority could be given from the date when the persons are not even eligible for appointment as Junior engineers. In the said case weightage of past service was given to the supervisors for consideration of promotion to the next higher post of Junior Engineer. The said weightage was given as per Government Orders, and accordingly the Supreme Court held that the weightage of service given to the supervisors can be taken advantage only for the purpose of eligibility for promotion to the post of Assistant Engineer and not for seniority. In the said judgement of Supreme Court has also taken into account and considered the observations in the case of **Pawan Pratap Singh v. Reevan Singh, (2011) 3 SCC 267:-**

45. From the above, the legal position with regard to determination of seniority in service can be summarised as follows:

(i) The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.

66. In the aforesaid judgement it has clearly been held that notional seniority cannot be granted ordinarily from a back date but if it is done it must be based on objective consideration and on a valid classification and must be traceable to statutory rules. Accordingly, it cannot be said that granting seniority from backdate is per se illegal and arbitrary, but in case the same is done it should be traceable to the statutory rules and as per the conditions laid down therein should be fulfilled. Despite considering the case of Pawan Pratap Singh, the supreme in the case of P. Sudhakar Rao further considered the judgement in the case of State of Uttranchal vs Dinesh Kumar Sharma (2007) 1 SCC 683 where the court was considering as to whether the year in which the vacancy accrues can have any relevance for the purpose of determining the seniority irrespective of the fact as to

when the persons are recruited, and held that no retrospective effect can be given to an order of appointment under the rules nor is such contention reasonable to normal parlance.

67. The Supreme Court while arriving at the conclusion in the case of P. Sudhakar Rao dealt with all the cases regarding giving retrospective effect to appointment letters, and emphasised the need to judge the issue keeping in mind the rule position along with the need for an objective consideration and valid classification in case such benefit is granted. It is relevant to mention at this stage that in the case of P. Sudhakar Rao we do not find any mention of any rules on the basis of which the weightage in seniority could be given, and therefore this leads us to consider the facts of the present case in light of provisions of rule 8 of U.P Government Servant Seniority Rules, 1991. According to rule 8 seniority would be granted from the date of substantive appointment and inter se seniority would also be determined on the same basis, but the proviso to rule 8 empowers the Government from making appointments from a back date which would be the deemed date of substantive appointment. Therefore, as per proviso to rule 8 the appointment can be made from backdate, and in case they are so made that date would be the deemed date of the substance of appointment and the statutory rules having provided for the same it cannot be said that the same would be illegal or without jurisdiction.

68. Having considered the statutory rules pertaining to making of appointment from a back date we proceed to examine as to whether appointment of the petitioners conform to the conditions prescribed by the Supreme Court in the case of ***Pavan Pratap Singh***.

69. In the present case, the process of promotion of the petitioners had commenced from the letter written on 27.6.2016 by the State Government to U.P. Public Service Commission requiring them

to conduct exercise of promotions of the petitions to the post of Review Officers and it was categorically mentioned therein that the process should be finalized by 30.6.2016 so that promotion could be made within the selection year. It is on the basis of the aforesaid letter that Departmental Promotion Committee was also convened on 30.6.2016 which considered the case of the petitioners for promotion and duly made recommendations to the State Government on 30.6.2016 itself. From the aforesaid facts, it is clear that it was the considered decision of the State Government looking into various representations made by them as well as the vacancies existing in the cadre of Review Officer that the petitioners ought to be promoted in the recruitment year 2015-16. Accordingly, it cannot be said that the decision of granting appointment to the petitioners with effect from 30.6.2016 is without any basis or without any rational nexus.

70. In the present case, looking into number of vacancies which had arisen in the cadre of Review Officers, coupled with the fact that in the meanwhile, direct recruitment had also been made, it was in the fitness of things that the State Government had taken a decision to promote the petitioners to the next higher post of Review Officers within the recruitment year 2015-16. We do not find any infirmity in such a decision-making process and no such infirmity have been pointed out by the respondents. The mere fact that the entire selection process spilled over beyond 30.6.2016 into the next recruitment year would not be a ground in itself to challenge the power of the Government in granting promotions of the petitioners with effect from 30.6.2016.

71. This Court has also noticed the proviso to Rule 8 of the Seniority Rules of 1991 which clearly provides that substantial promotion can be made from a back date and accordingly we find that there is justification in granting the benefit of appointment from 30.6.2016 in as much as the intentions itself was clearly expressed in the letter dated 27.6.2016 and also that the same was

complied with and the DPC was also convened on 30.6.2016. Subsequently, the approval was granted by the U.P Public Services Commission on 08/07/2016, and finally the promotion order was issued on 13/07/2016. Clearly the process of promotion having commenced within the recruitment year and even the DPC was convened in the same recruitment year, it cannot be said that there is no reasonable nexus for grant of promotion in the recruitment year 2015-16.

72. The argument of learned counsel for the respondents in interpreting proviso to Rule 8 of the Seniority Rules, 1991, it was stated that the word “person” occurring in the proviso, would limit the operation of the said rule to an individual rather than to more than one person. After due consideration of the said objections we find that the same is liable to be rejected in as much as, firstly, the appointment is an individual right and not the collective right even if the orders of appointment pertain to a batch or to number of persons remains individual right and not the collective right, and further in case of a dispute each appointment has to be looked into individually and we do not find any cogent reason to accept the arguments of the respondents that all the petitioners could not have been granted appointment from back date, but only one person could have been so granted.

73. Apart from the above, a perusal of section 13 of the U.P General clauses Act, would indicate that a singular includes a plural and where the rule refers to “person” for giving appointment from a back date would also extend in case there are more than one persons. Interpreting the said provision, otherwise would be unreasonable and arbitrary in as much as it would restrict the benefit of granting substantial appointment from the back date to only one individual (person) and denying the same to other similarly situated persons seeking the same benefit. The interpretation which is reasonable and is in conformity with the Constitutional scheme, is liable to be accepted and followed

rather than any interpretation which would lead to absurdity and arbitrariness. Accordingly, this Court is of the view that in interpreting the proviso to Rule 8 appointments can be granted from back date either to a single individual or to a group of individuals and, hence, the argument of the respondents in this regard are rejected.

74. Another issue raised by the petitioner is that the seniority has been disturbed after a long length of time, and it is a consistent view of this court as well as the Supreme Court that the settled position of seniority cannot be disturbed after a long length of time. The seniority was fixed in accordance with law firstly in 2016, and subsequently on 2 other occasions after receiving objections, the State respondents had up in the grant of seniority to the petitioner with effect from 30/06/2016. This unsettling of seniority after 7 years is illegal and arbitrary. The respondents on other hand have submitted in case the seniority has been fixed contrary to the provisions of law then the same can be then the same can be rectified any time when it is discovered .

75. This Court after considering the rival contentions is of the considered view that the legal principle that “seniority once settled cannot be unsettled after lapse of many years “*Stare decisis et non quieta movere*” is a Latin phrase that means "to stand by decided matters and not to disturb settled points". It is the basis of the legal doctrine of precedent, which requires courts and decision-making authorities to follow previous decisions when similar cases arise. This principle protects the rights of employees who have relied on their seniority for career progression, helps maintain harmony among colleagues and prevents litigation, which can be costly and time-consuming. It has been upheld by the Hon'ble Supreme Court and High Courts time and again. The Relevant Case laws upholding the same are hereinafter mentioned:-

76. In the case of **Tilokchand Motichand v. H.B. Munshi, (1969) 1**

SCC 110, it was held:-

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

Rabindranath Bose v. Union of India, (1970) 1 SCC 84

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

Malcom Lawrence Cecil D'Souza v. Union of India, (1976) 1 SCC 599

“9. Although security of service cannot be used as a shield against administrative action for lapses of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time.”

B.S. Bajwa v. State of Punjab, (1998) 2 SCC 523

“7. ... It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This

alone was sufficient to decline interference under Article 226 and to reject the writ petition.”

77. The Supreme Court in the case of **Shiba Shankar Mohapatra v. State of Orissa** (2010) 12 SCC 471 observed as under:—

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

78. Accordingly, the legal principle is well settled that the long-standing seniority which is in existence for 3-4 years may not be unsettled. In the present case it has been unsettled after a long lapse of 7 years, and it is not the case that the respondents were not aware in the manner in which the petitioners were granted appointment from a backdate. The objections filed by the private respondents were duly considered and rejected on at least 3 occasions as discussed above, and consequently by means of the impugned order which has been passed after substantial delay the settled position of seniority of the petitioners could not be unsettled, accordingly this Court is of the view that on this ground also the impugned order is illegal and arbitrary and liable to be set aside.

79. Learned counsel for the respondents has raised an objection stating that only 6 individuals have been impleaded as opposite parties i.e. respondent 4-9. He submits that the challenge to the promotion order will affect all the persons in the list but not everyone has been impleaded as necessary party which renders the petition liable to be dismissed for non-joinder of parties.

80. Per contra, counsel the petitioner submitted that firstly the main challenge in the present set of writ petitions is to the order of the Government dated 09/08/2023 whereby the date of appointment of the petitioners has been changed, and on the basis of the change in date they have been pushed back in the seniority list. In case the order dated 09/08/2023 set aside then the entire seniority list would have to be redrawn keeping the petitioners higher in the seniority list, and in case any promotions have been consequently made on the basis of the illegal and arbitrary seniority list will have to be undone. It was further emphasised that there is no challenge to individual seniority of any particular individual and in case few of the affected persons have been made parties in the representative capacity then there would not be any need to make all the persons subsequently promoted as the respondents in the present writ petition.

81. After due consideration of the given facts in the present case, this Court is of the view that impleading a long list of parties will not only unnecessarily stretch the process of dispensation of justice but will also involve extravagant expenses in serving all the parties. In cases where there is a common grievance of a large number of employees, impleading few affected employees would be sufficient compliance with the principle of joinder of parties. Apart from the above an application for impleadment was moved by the direct recruits of 2013 batch which was allowed and they have been heard extensively in opposition to the writ petition.

82. The above-mentioned view has been upheld by Hon'ble Supreme court in array of judgments including recent case of **Ajay Kumar Shukla v. Arvind Rai, (2022) 12 SCC 579**. The relevant Paragraphs are mentioned hereinafter:

“50. In the recent case of Mukul Kumar Tyagi v. State of U.P. [Mukul Kumar Tyagi v. State of U.P., (2020) 4 SCC 86 : (2020) 1 SCC (L&S) 736] , Ashok Bhushan, J., laid emphasis that when there is a long

list of candidates against whom the case is proceeded, then it becomes unnecessary and irrelevant to implead each and every candidate. If some of the candidates are impleaded, then they will be said to be representing the interest of rest of the candidates as well. The relevant portion of para 81 from the judgment is reproduced below : (SCC p. 119)

“81. ... We may further notice that the Division Bench [Deepak Sharma v. State of U.P., 2019 SCC OnLine All 5970] also noticed the above argument of non-impleadment of all the selected candidates in the writ petition but the Division Bench has not based its judgment on the above argument. When the inclusion in the select list of large number of candidates is on the basis of an arbitrary or illegal process, the aggrieved parties can complain and in such cases necessity of impleadment of each and every person cannot be insisted. Furthermore, when select list contained names of 2211 candidates, it becomes unnecessary to implead every candidate in view of the nature of the challenge, which was levelled in the writ petition. Moreover, few selected candidates were also impleaded in the writ petitions in representative capacity.”

83. This aspect was also considered by the Supreme Court in the case of **Ajay Kumar Shukla v. Arvind Rai, (2022) 12 SCC 579** : -

“81. ... We may further notice that the Division Bench [Deepak Sharma v. State of U.P., 2019 SCC OnLine All 5970] also noticed the above argument of non-impleadment of all the selected candidates in the writ petition but the Division Bench has not based its judgment on the above argument. When the inclusion in the select list of large number of candidates is on the basis of an arbitrary or illegal process, the aggrieved parties can complain and in such cases necessity of impleadment of each and every person cannot be insisted. Furthermore, when select list contained names of 2211 candidates, it becomes unnecessary to implead every candidate in view of the nature of the challenge, which was levelled in the writ petition. Moreover, few selected candidates were also impleaded in the writ petitions in representative capacity.”

51. *The present case is a case of preparation of seniority list and that too in a situation where the*

appellants (original writ petitioners) did not even know the marks obtained by them or their proficiency in the examination conducted by the Commission. The challenge was on the ground that the Rules on the preparation of seniority list had not been followed. There were 18 private respondents arrayed to the writ petition. The original petitioners could not have known who all would be affected. They had thus broadly impleaded 18 of such Junior Engineers who could be adversely affected. In matters relating to service jurisprudence, time and again it has been held that it is not essential to implead each and every one who could be affected but if a section of such affected employees is impleaded then the interest of all is represented and protected. In view of the above, it is well settled that impleadment of a few of the affected employees would be sufficient compliance of the principle of joinder of parties and they could defend the interest of all affected persons in their representative capacity. Non-joining of all the parties cannot be held to be fatal.

84. Accordingly, we do not find any merit in the preliminary objection raised by the respondents and the petitioner is having impleaded 6 respondents in the representative capacity, while impleadment application of 10 other candidates was duly allowed and have been heard in the present writ petition. Non-impleadment of the remaining persons, who have been consequentially promoted, cannot be fatal to the present writ petition and hence the objection to the maintainability of the writ petitions are rejected.

85. For the reasons recorded herein-above, the writ petitions are **allowed**. The order dated 09/08/2023, Seniority list dated 06/09/2023 and consequential promotion orders dated 25/10/2023 are quashed, and the respondents are directed to treat the petitioners as having been promoted to the post of Review Officers with effect from 13/07/2016 and further to grant them benefit of seniority from the said date. The respondents are further directed to prepare a fresh seniority list in light of the

directions issued by this Court and to further consider the case of petitioners for promotion in accordance with law.

Dt. 24.2.2025

(Alok Mathur, J.)

RKM.