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UNION OF INDIA & ANR.

v.

MANPREET SINGH POONAM ETC.

(Civil Appeal Nos. 517-518 of 2017)

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MARCH 08, 2022

[SANJAY KISHAN KAUL AND M. M. SUNDRESH, JJ.]

National Capital Territory of Delhi, Andaman and Nicobar Islands, Lakshdweep, Daman and Diu and Dadra and Nagar Haveli (Civil Service) Rules, 2003 – r. 4, 7 – Claim by respondent-retired

C *seeking benefit of pay-upgradation – Held: It is a trite law that once an officer retires voluntarily there is cessation of jural relation between the employer and the employee and such an employee cannot seek to agitate his past, as well as, future rights, if any, sans the prescription of rules – Service Law.*

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National Capital Territory of Delhi, Andaman and Nicobar Islands, Lakshdweep, Daman and Diu and Dadra and Nagar Haveli (Civil Service) Rules, 2003 – r. 4, 7 – Claim by respondent-in-service seeking the effect of promotion so granted from retrospective effect – Held: A mere existence of the vacancy per se will not create a

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right in favour of an employee for retrospective promotion when the vacancies in the promotional post is specifically prescribed under the rules – Since the respondent-in-service was given promotion after successful consideration by the department promotion committee, appellant rightly fixed the promotion with the year of actual vacancy, as per rules – Service Law.

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Service Law: Promotion – Differentiating applicability of two set of Rules – A right of promotion and subsequent benefits and seniority would arise only with respect to the rules governing the said promotion and not a different set of rules which might apply to a promoted post facilitating further promotion which is governed by different set of rules.

Allowing the appeals, the Court

HELD: 1. Differential pay scale along with a process of selection *qua* suitability fixing eligibility criteria are the factors

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to determine whether a particular post is the same as the other or a promotional one. Such an exercise is not required since the rules themselves are specific. When the rules are specific and clear, there is no need for interpretation which may lead to a case of judicial legislation. Submission of the learned counsel for the appellant that the reasoning of the CAT, though not challenged is unsustainable, since there is no occasion to challenge it with the dismissal of the applications filed also holds good. [Para 13][771-G-H; 772-A-B]

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2. It is trite law that once an officer retires voluntarily, there is cessation of jural relationship resorting to a “golden handshake” between the employer and employee. Such a former employee cannot seek to agitate his past, as well as future rights, if any, *sans* the prescription of rules. This would include the enhanced pay scale. The Respondent in Civil Appeal No.517 of 2017 was rightly not considered in the DPC in 2012 since he was no longer in service at the relevant point of time. The High Court has committed an error in relying upon a circular, which has got no application at all, particularly in the light of the finding that the court is dealing with a case of promotion simpliciter as against up-gradation of any nature. [Para 16][774-C-D]

3. On facts, there is no dispute that Respondent in Civil Appeal No.518 of 2017 was given promotion after the successful consideration by the DPC. On such clearance the appellant has rightly fixed the promotion with the year of actual vacancy, as per rules. Thus, the Respondent neither on facts nor on law can claim retrospective promotion, and that too from the year 2009 being the year in which he was placed in the select list against a notional vacancy, especially when the then existing vacancy accrued only in the year 2011, when the JAG-I officers were actually inducted into IAS, against which he was promoted. As such, the promotion cannot be granted retrospectively and extended to give benefit and seniority from the date of notional vacancy, causing violence to Rule 4 and 7 of the 2003 Rules. A mere existence of vacancy *per se* will not create a right in favour of an employee for retrospective promotion when the vacancies in the promotional post is specifically prescribed under the rules, which also mandate

- A the clearance through a selection process. When dealing with a case of promotion, there can never be a parity between two separate sets of rules. In other words, a right to promotion and subsequent benefits and seniority would arise only with respect to the rules governing the said promotion, and not a different set of rules which might apply to a promoted post facilitating further promotion which is governed by a different set of rules. In the present case, the authority acting within the rules has rightly granted promotion after clearance of DPC on 17.04.2012 with effect from 01.07.2011, when the actual vacancies arose, which in any case is a benefit granted to the Respondent in Civil Appeal No.518 of 2017. This exercise of power by the authority of granting retrospective promotion with effect from the date on which actual vacancies arose is based on objective considerations and a valid classification. [Paras 17, 18][774-E-H; 775-A-B]

D *Union of India v. KK Vadhera and Ors., [1989] Supp 2 SCC 625 : [1989] 1 Suppl. SCR 751; Ganga Vishan Gujrati and Ors. v. State of Rajasthan, (2019) 16 SCC 28 : [2019] 11 SCR 444; Ajay Kumar Shukla and Ors. v. Arvind Rai and Ors. 2021 SCC OnLine SC 1195 – relied on*

E Case Law Reference

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|-------------------------|-----------|---------|
| [1989] 1 Suppl. SCR 751 | relied on | Para 19 |
| [2019] 11 SCR 444 | relied on | Para 20 |

F CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 517-518 of 2017.

From the Judgment and Order dated 05.12.2014 of the High Court of Delhi at New Delhi in Writ Petition (C) Nos.8494 and 8516 of 2014.

Ms. Rekha Pandey, Sumit Teterwal, Ms. Snidha Mehra, Ms. Prerna Kumari, Arvind Kumar Sharma, Advs. for the Appellants.

G Ms. Binu Tamta, Ms. Avnish Ahlawat, Dr. Monika Gusain, Advs. for the Respondents.

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The Judgment of the Court was delivered by

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M. M. SUNDRESH, J.

1. These appeals are filed by the respondents before the High Court and the Central Administrative Tribunal, raising a challenge on two grounds, namely: -

i. A voluntary retiree cannot seek promotion as a matter of right *sans* rules governing.

ii. a mere delay in consideration of the promotion would not create a vested right over a post that quantifies the maximum accommodation in terms of numbers, involving a process of suitability.

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BRIEF FACTS:

2. Both the respondents before us worked with the appellant holding the post of Junior Administrative Grade-II (*hereinafter referred to as "JAG-II"*) officers. Respondent in Civil Appeal No.517 of 2017 retired in the said capacity voluntarily in the year 2010. Respondent in Civil Appeal No.518 of 2017 was promoted on *ad hoc* basis to Junior Administrative Grade-I (*hereinafter referred to as "JAG-I"*) vide order dated 27.12.2011 and regularized vide notification dated 17.04.2012 with effect from 01.07.2011, after undergoing a selection process against the vacancies in tune with Rule 4 of the *National Capital Territory of Delhi, Andaman and Nicobar Islands, Lakshadweep, Daman and Diu and Dadra and Nagar Haveli (Civil Service) Rules, 2003* (*hereinafter referred to as '2003 Rules'*) which prescribes 10% as the maximum in the cadre of JAG-I of the total sanctioned strength of the posts in the service. The 2003 Rules were amended vide Notification dated 01.10.2009, and the sanctioned strength was increased to 472.

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3. The respondents filed separate applications before the Central Administrative Tribunal (CAT). Despite holding that the post of JAG-I is neither wholly promotional nor an upgradation, the applications were dismissed on the premise that a conjoint reading of Rule 4 and 7 of the 2003 Rules would disentitle the relief being granted.

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4. The respondents filed writ petitions assailing the aforesaid decision of the CAT, which were allowed *inter alia* holding that Respondent in Civil Appeal No.517 of 2017 is entitled to relief in terms of the Circular No.AB.14017/47/2011-EST (DR) dated 01.08.2012 issued

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- A by the *Department of Personnel and Training (DoPT)*, which facilitates a retired officer who is otherwise eligible as on the due date to be considered for the benefit of “pay-upgradation”. In the case of Respondent in Civil Appeal No.518 of 2017, the High Court reasoned that after keeping the officer without consideration for promotion for a long time, with the decision to grant promotion with effect from 01.07.2011, there is no justification for denying it from 01.10.2009. Thus, both the writ petitions found favour with the High Court. Assailing the aforesaid orders, the appellants filed the present appeals.

ARGUMENTS:

- C 5. Heard Ms. Rekha Pandey, learned counsel for the Appellants, Ms. Avnish Ahlawat, learned counsel for the Respondent in Civil Appeal No.517 of 2017 and party in person in Civil Appeal No. 518 of 2018.
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- C 6. The learned counsel appearing for the appellants submitted that the High Court committed a fundamental error in granting the relief
- D in favour of Respondent in Civil Appeal No.517 of 2017, Shri M.S. Poonam, who admittedly voluntarily retired in the year 2010 while the promotion was granted after the completion of the selection process on 04.04.2012 against the vacancies which arose in the year of 2011, in the light of promotion of ‘JAG-I’ officers to IAS. The High Court has misconstrued Circular No. AB.14017/47/2011-EST (DR) dated
- E 01.08.2012 issued by the *Department of Personnel and Training (DoPT)*, which can be applied only for upgradation simpliciter. There is no need to challenge the finding of the CAT when the applications filed were dismissed.
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- F 7. As there is no vested or accrued right over a promotional post, in the absence of any vacancies actually in existence for the year 2009, the migration of the other officers of the Indian Administrative Service (IAS) cadre took place only in the year 2011. Thus, the embargo brought forth by Rule 4 and 7 of the 2003 Rules would not facilitate such a relief. Under the *Indian Administrative Service (Appointment by promotion) Regulations 1954*, and *IAS (Regulations of Seniority Rules, 1987*, Officers inducted into IAS from ‘JAG-I’ get seniority from the date on which vacancy arises, even though induction takes place subject to DPC. In the present case, there was a delay in holding of *Departmental Promotion Committee* (hereinafter referred to as ‘DPC’) for induction of JAG-I officers into IAS, as such actual vacancy in JAG-I occurred in
- H 2011, even though notional vacancy may have arisen in 2009 itself. Since

the promotion from JAG-II to JAG-I is governed by the 2003 Rules, which prescribe promotion when actual vacancy arises and DPC takes place, as such, a right would accrue to an officer only after his entry and therefore, mere inclusion in the select list based on induction of JAG-I officers into IAS, is of no consequence. Under the 2003 Rules, a vacancy would mean an actual one and inclusion in the select list to a different cadre governed by different rules would not create a deemed one. In any case, on facts, the respondent in Civil Appeal No.518 of 2017 was appointed to JAG-I service on an *ad hoc* basis only on 27.12.2011 and, therefore, without being inducted in the said cadre, he cannot seek for promotion with retrospective effect.

8. It was further submitted that regularization took place on 17.04.2012 with effect from 01.07.2011, after his clearance by the DPC, which is a benefit conferred upon him. Since there would be an excess of 10% in the post of JAG-I, the aforesaid rules also clearly indicate that JAG-I is a promotional post from the feeder category of JAG-II as demonstrated through Schedule I and Schedule III in tune with the emphasis of Rule 4.1, 7.3, 7.4 and 7.5 of the 2003 Rules.

9. The counsel for Respondent in Civil Appeal No.517 of 2017 submitted that what has been done is only an upgradation and, therefore, the consequential benefit will have to be given to the respondent as well. Respondent in Civil Appeal No.518 of 2017, Shri Suresh Gupta, submitted that one has to see the proviso to Rule 4 of 2003 Rules, and for the delay committed by the Appellants, he cannot be made to suffer. It was further submitted that the Respondents were at Serial No.1 and 2, in the select list for the year 2009, and as such, his appointment ought to be with effect from 2009 and not 01.07.2011.

ANALYSIS AND CONCLUSION:

10. On considering the submissions made, it would only be appropriate to place on record the relevant rules governing the issues raised along with the schedules:

Rule 4.1 of the 2003 Rules:

“4.Grades, strength and their review.-

(1) The duty posts included in the various grades, their number and the scales of pay attached to them on the date of commencement of these rules shall be as specified in

- A *Schedule I: Provided that ten per cent and twenty per cent of the sanctioned strength of the posts in the Service shall be non-functional grades of Junior Administrative Grade-I and Selection Grade respectively, and these shall be operated within the respective number of posts specified in Parts B and C of Schedule I: Provided further that the number of posts in Junior Administrative Grade I shall not exceed the total number of sanctioned posts in the Junior Administrative Grade in the scale of pay of Rs.12,000-16,500.”*
- B *(3) All the vacancies in the grades of Junior Administrative Grade-I, Junior Administrative Grade-II and Selection Grade shall be filled by promotion from amongst the officers in the immediate respective lower grade with the minimum qualifying service as specified in Schedule III.*

Rule 7.3, 7.4 and 7.5 of the 2003 Rules:

C “7. Future maintenance of the Service: -

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| xxx | xxx | xxx |
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- D *(4) (a) All the vacancies in the grades of Junior Administrative Grade-I, Junior Administrative Grade-II and Selection Grade shall be filled by promotion from amongst the officers in the immediate respective lower grade with the minimum qualifying service as specified in Schedule III.*

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- E *(b) The promotion to the Junior Administrative Grade-I and Selection Grade shall be made in the order of seniority subject to rejection of unfit.*
- F *(c) The selection in each case under sub-rule (4) shall be made on the recommendations of the Departmental Promotion Committee.”*

Schedule I of the 2003 Rules:

- G “SCHEDULE I
[See rule 4(1)]
- H Name, number and scale of pay of duty posts in the grades of the National Capital Territory of Delhi, Andaman and Nicobar Islands Lakshadweep, Daman and Diu and Dadra and Nagar Haveli Civil Service.

| Part A | | Grades and sanctioned strength of the Service |
|--------|---|---|
| (a) | Grades of the Service | Scales of pay |
| 1 | Junior Administrative Grade I (Group A) | Rs.14,300-400-18,300 |
| 2 | Junior Administrative Grade II (Group A) | Rs. 12,000-375-16,500 |

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Schedule III of the 2003 Rules:

“SCHEDULE III

[See rule 7 (3)]

| Sl. No. | Grade | Method of promotion | Eligibility for Promotion |
|---------|-------------------------------|--|--|
| (1) | (2) | (3) | (4) |
| 1. | Junior Administrative Grade I | By promotion in the order of seniority subject to rejection of unfit on the recommendations of the Departmental Promotion Committee. | A regularly appointed Junior Administrative Grade-II officer with a minimum of eighteen years approved service shall be eligible to be considered for promotion to the Junior Administrative Grade I |

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11. There is no dispute, at least to the effect, that the aforesaid rules and the schedules govern the service condition, including the officer's promotion from JAG-II to JAG-I. Rule 4 fixes the cap of the sanctioned strength to the post to the maximum of 10%. The schedules to the aforesaid rules clearly indicate the different pay scales for JAG-I and JAG-II.

12. Rule 7 of the 2003 Rules specifies that the vacancies arising in JAG-I shall only be filled by promotion from amongst the officers in the immediate respective lower grade with the minimum qualifying service as specified in Schedule III. Schedule III clearly states that JAG-I is the promotional post with JAG-II as the feeder cadre post, subject to the other prescribed qualifications.

13. As there is no ambiguity in the aforesaid rules, we are not able to approve the views of the CAT and the High Court that JAG-I is a mere upgradation of JAG-II. Differential pay scale along with a process of selection *qua* suitability fixing eligibility criteria are the factors to determine whether a particular post is the same as the other or a promotional one. We feel that such an exercise is not required since the

- A rules themselves are specific. When the rules are specific and clear, there is no need for interpretation which may lead to a case of judicial legislation. We are also in agreement with the submission of the learned counsel for the appellant that the reasoning of the CAT, though not challenged is unsustainable, since there is no occasion to challenge it with the dismissal of the applications filed.
- B 14. The High Court also fell in error in taking note of the delay in considering the case of the respondents to the promotional post of JAG-I. No officer has a vested right to a promotional post, which is restricted to that of consideration according to law. The law on this aspect is settled by this Court in the case of Ajay Kumar Shukla and Ors. v. Arvind Rai and Ors., 2021 SCC OnLine SC 1195:
- “37. This Court, time and again, has laid emphasis on right to be considered for promotion to be a fundamental right, as was held by K. Ramaswamy, J., in the case of Director, Lift Irrigation Corporation Ltd. v. Pravat Kiran Mohanty [(1991) 2 SCC 295] in paragraph 4 of the report which is reproduced below:
- “4... There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with relevant rules. From this perspective in our view the conclusion of the High Court that the gradation list prepared by the corporation is in violation of the right of respondent/writ petitioner to equality enshrined under Article 14 read with Article 16 of the Constitution, and the respondent/writ petitioner was unjustly denied of the same is obviously unjustified.”
- C 38. A Constitution Bench in case of Ajit Singh v. State of Punjab [(1999) 7 SCC 209], laying emphasis on Article 14 and Article 16(1) of the Constitution of India held that if a person who satisfies the eligibility and the criteria for promotion but still is not considered for promotion, then there will be clear violation of his/her's fundamental right. Jagannadha Rao, J. speaking for himself and Anand, CJI., Venkataswami, Pattanaik, Kurdukar, JJ., observed the same as follows in paragraphs 21 and 22 and 27:
- “21 : Articles 14 and 16(1) : is right to be considered for promotion a fundamental right
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22 : Article 14 and Article 16(1) are closely connected. They deal with individual rights of the person. Article 14 demands that the “State shall not deny to any person equality before the law or the equal protection of the laws”. Article 16(1) issues a positive command that “there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State”.

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It has been held repeatedly by this Court that clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said clause particularises the generality in Article 14 and identifies, in a constitutional sense “equality of opportunity in matters of employment and appointment to any office under the State. The word “employment” being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be “considered” for promotion. Equal opportunity here means the right to be “considered” for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be “considered” for promotion, which is his personal right.

“Promotion based on equal opportunity and seniority attached to such promotion are facets of fundamental right under Article 16(1)

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27. In our opinion, the above view expressed in Ashok Kumar Gupta and followed in Jagdish Lal and other cases, if it is intended to lay down that the right guarantee to employees for being “considered” for promotion according to relevant rules of recruitment by promotion (i.e. whether on the basis of seniority or merit) is only a statutory right and not a fundamental right, we cannot accept the proposition. We have already stated earlier that the right to equal opportunity in the matter of promotion in the sense of a right to be “considered” for promotion is indeed a fundamental right guaranteed under Article 16(1) and this has never been doubted in any other case before Ashok Kumar Gupta right from 1950.”

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- A 15. On facts, we find that promotions could be given for the reason that the migration of the then incumbent in the post of JAG-I, despite being in the select list to the cadre of IAS, did not take place and thus, they were working in the said post till the date of notification paving way. The aforesaid factual position not disputed, the rigor of Rule 4 would certainly come into play. We do not find the proviso to Rule 4 helping the case of the respondents. The post of JAG-I is certainly a promotional post from the feeder cadre of the JAG-II.

- B 16. It is trite law that once an officer retires voluntarily, there is cessation of jural relationship resorting to a “golden handshake” between the employer and employee. Such a former employee cannot seek to agitate his past, as well as future rights, if any, *sans* the prescription of rules. This would include the enhanced pay scale. The Respondent in Civil Appeal No.517 of 2017 was rightly not considered in the DPC in 2012 since he was no longer in service at the relevant point of time. The High Court has committed an error in relying upon a circular, which has got no application at all, particularly in the light of our finding that we are dealing with a case of promotion simpliciter as against up-gradation of any nature.

- C 17. On facts, there is no dispute that Respondent in Civil Appeal No.518 of 2017 was given promotion after the successful consideration by the DPC. On such clearance the appellant has rightly fixed the promotion with the year of actual vacancy, as per rules. Thus, the Respondent neither on facts nor on law can claim retrospective promotion, and that too from the year 2009 being the year in which he was placed in the select list against a notional vacancy, especially when the then existing vacancy accrued only in the year 2011, when the JAG-I officers were actually inducted into IAS, against which he was promoted. As such, the promotion cannot be granted retrospectively and extended to give benefit and seniority from the date of notional vacancy, causing violence to Rule 4 and 7 of the 2003 Rules.

- D 18. A mere existence of vacancy *per se* will not create a right in favour of an employee for retrospective promotion when the vacancies in the promotional post is specifically prescribed under the rules, which also mandate the clearance through a selection process. It is also to be borne in mind that when we deal with a case of promotion, there can never be a parity between two separate sets of rules. In other words, a right to promotion and subsequent benefits and seniority would arise only with respect to the rules governing the said promotion, and not a

different set of rules which might apply to a promoted post facilitating further promotion which is governed by a different set of rules. In the present case, the authority acting within the rules has rightly granted promotion after clearance of DPC on 17.04.2012 with effect from 01.07.2011, when the actual vacancies arose, which in any case is a benefit granted to the Respondent in Civil Appeal No.518 of 2017. In our view, this exercise of power by the authority of granting retrospective promotion with effect from the date on which actual vacancies arose is based on objective considerations and a valid classification.

19. This Court in the case of Union of India v. KK Vadhera and Ors., 1989 Supp (2) SCC 625 has clearly laid down that the promotion to a post should only be granted from the date of promotion and not from the date on which vacancy has arisen, and has observed that:

“5....We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgment of the Tribunal.”

20. Similarly, this Court in the case of Ganga Vishan Gujrati and Ors. v. State of Rajasthan, (2019) 16 SCC 28 has held that:

45. A consistent line of precedent of this Court follows the principle that retrospective seniority cannot be granted to an employee from a date when the employee was not borne on a cadre. Seniority amongst members of the same grade has to be counted from the date of initial entry into the grade. This principle emerges from the decision of the Constitution Bench of this Court in Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra, (1990) 2 SCC 715 . The principle was reiterated by this Court in State of Bihar v. Akhouri Sachindra Nath, 1991 Supp (1) SCC

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- A 334 and State of Uttarakhand v. Dinesh Kumar Sharma, (2007) 1 SCC 683. In Pawan Pratap Singh v. Reevan Singh, (2011) 3 SCC 267, this Court revisited the precedents on the subject and observed: (SCC pp. 281-82, para 45)
- “45.... (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.”

This view has been re-affirmed by a Bench of three Judges of this Court in P. Sudhakar Rao v. U. Govinda Rao, (2013) 8 SCC 693.”

- G 21. For the aforesaid reasoning, we are unable to give our imprimatur to the reasoning of the High Court. Accordingly, the appeals stand allowed and consequently, the order passed by the High Court stand set aside. No costs.