

[2019] 2 S.C.R. 131

UNION OF INDIA & ORS.

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v.

C. GIRIJA & ORS.

(Civil Appeal No. 1577 of 2019)

FEBRUARY 13, 2019

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**[ASHOK BHUSHAN AND K. M. JOSEPH, JJ.]**

*Service law: Promotion – Belated representation – Notification inviting applications for filling up of 05 posts under 30% LDCE quota (04 unreserved and 01 reserved for SC) – Declaration of Panel on 09.01.2001 – Applicant-general category candidate seeking inclusion of her name in the Panel for promotion as APO – Submission of representation by appellant on 25.09.2007 seeking inclusion of her name in the panel – Representation rejected – However, direction by the tribunal and the High Court for inclusion of the name of the applicant in the panel – On appeal, held: Claim of the applicant for inclusion of her name in the panel, was raked up by her for the first time on 25.09.2007, after more than 06 and half years – Claim became stale by that time and filing of representation will not give any fresh cause of action – Thus, mere fact that representation was replied by the Railways on 27.12.2007, a stale claim would not become a live claim – After participating in subsequent selections under 30% quota and being declared unsuccessful, by mere filing representation on 25.09.2007 with regard to selection made in 2001, the delay and laches shall not be wiped out – Tribunal and the High Court ought not to have entertained the stale claim of the applicant – As regards the issue that under 30% quota of LDCE, all the 05 vacancies ought to have been made unreserved and notification dated 14.10.1999 making 04 vacancies unreserved and 01 vacancy reserved for SC was illegal, the explanation by the Railway was a plausible explanation, which was not such as to give a cause for interference by the tribunal and the High Court – Delay and laches.*

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**Allowing the appeals and disposing of the writ petitions, the Court**

**HELD: 1.1 The claim of the applicant for inclusion of her name in the panel, which was issued on 09.01.2001 and for the first time was raked up by her, by filing representation on**

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- A 25.09.2007, i.e., after more than 06 and half years. The claim of inclusion in the panel had become stale by that time and filing of representation will not give any fresh cause of action. Thus, mere fact that representation was replied by Railways on 27.12.2007, a stale claim shall not become a live claim. Both tribunal and High Court did not advert to this important aspect of the matter.
- B Furthermore, after declaration of panel on 09.01.2001, there were further selection under 30% promotion by LDCE quota, in which the applicant participated. In selection held in 2005 she participated and was declared unsuccessful. With regard to her non-inclusion in panel in 2005 selection, she also filed O.A. before the tribunal, which was dismissed. After participating in subsequent selections under 30% quota and being declared unsuccessful, by mere filing representation on 27.09.2007 with regard to selection made in 2001, the delay and laches shall not be wiped out.[Para 16][142-F-H, 143-A-B]
- C 1.2 The applicant was well aware that under 30% LDCE quota, out of 05 vacancies, 04 are unreserved and 01 is reserved, which was circulated by notification dated 14.10.1999. She applied against the said bifurcated vacancies and was interviewed on 08.01.2001, panel of which was declared on 09.01.2001 and promotion was made on the same day. She having participated in the selection for promotion under 30% LDCE quota and the bifurcation of the vacancies being part of the process of selection, it was not open for her to challenge the bifurcation of vacancies into general and reserved after taking a chance to get selected. Thus, tribunal and the High Court ought not to have entertained the stale claim of the applicant.
- D [Paras 17, 18][143-B-C, 146-A-B]
- E [Paras 17, 18][143-B-C, 146-A-B]
- F [Paras 17, 18][143-B-C, 146-A-B]

*C.Jacob v. Director of Geology and Mining and Another (2008) 10 SCC 115 : [2008] 14 SCR 634; Union of India and Others v. M.K. Sarkar (2010) 2 SCC 59 : [2009] 16 SCR 249;*

- G *State of Uttaranchal and Another v. Shiv Charan Singh Bhandari and Others (2013) 12 SCC 179 : [2013] 9 SCR 609; P.S. Sadasivaswamy v. State of Tamil Nadu (1975) 1 SCC 152 : [1975] 2 SCR 356; Ashok Kumar and Another v. State of Bihar and Others (2017) 4 SCC 357 : [2016] 8 SCR 815 – referred to.*
- H *[2016] 8 SCR 815 – referred to.*

**2.1** The tribunal and the High Court both observed that any vacancy coming after the relevant period ought not to have been taken. Those observations were in context of vacancy, which arose due to promotion of AB on 03.01.2001. In the affidavit, it was clearly mentioned that assessment of vacancies is limited up to 30.09.1998 and vacancies accrued after 01.10.1998 were taken only for subsequent selection. Thus, it is clear that in computation for vacancies under 30%, no vacancy, which had arisen out of relevant period was taken. Applicant submitted that under 30% both, AB and JS being available, there could not have been 01 further vacancy reserved for SC. In the affidavit, it was mentioned that the roster point from point number 9 to 13 of the roster was for 30% selection. But 9<sup>th</sup> point having already been consumed by SR, who was selected and empaneled during 1996-97, therefore, the actual point to be consumed should be from point No. 10 to 14. Point No. 14 being reserved for SC, 05 vacancies but 30% quota were distributed accordingly and out of which 01 vacancy was allocated to SC. Thus, there was plausible explanation for determination of vacancies given by the Railways. The explanation with regard to roster point as given by the Railways has not been adverted to by High Court or tribunal. Thus, the explanation by the Railway was a plausible explanation, which was not such as to give a cause for interference by the tribunal and the High Court. Thus, the above ground for interference as given by the tribunal and the High Court is unsustainable. [Para 21][148-F-H, 149-A-B]

**2.2** The applicant having retired on 31.05.2015 there was no impediment to compute and pay her retirement benefits without prejudice to the claim of Railways. The delay in payment of retiral benefits has to be compensated by directing payment of interest. Thus, the applicant was entitled for retiral benefits immediately after the date of retirement. Respondent Nos.1 to 4 in the Writ Petition are directed to determine and pay the retirement benefits to the applicant, if not already paid, within the stipulated period. The applicant is directed to paid interest @ 8% p.a. on retirement benefits after one month of retirement i.e. w.e.f. 01.07.2015, till the payment is made of the retiral benefits. [Paras 22, 23][149-D-F]

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- | A  | <b><u>Case Law Reference</u></b>   |  |
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|  | <p>[2008] 14 SCR 634      referred to      <b>Para 12</b></p> <p>[2009] 16 SCR 249      referred to      <b>Para 13</b></p> <p>[2013] 9 SCR 609      referred to      <b>Para 14</b></p> |  |
| <p>B [1975] 2 SCR 356      referred to      <b>Para 15</b></p> <p>[2016] 8 SCR 815      referred to      <b>Para 17</b></p>  |  |  |
| <p>CIVIL APPELLATE/ORIGINAL JURISDICTION : Civil Appeal No. 1577 of 2019.</p>  |  |  |
| <p>C      From the Judgment and Order dated 06.02.2015 of the High Court of Kerala, Ernakulam in OP (CAT) No. 925 of 2012 (Z).</p>   | <p>With</p>  |  |
| <p>Civil Appeal No. 1578 of 2019, W.P. (C) No. 653 of 2015.</p>  |  |  |
| <p>D      K. M. Nataraj, ASG, Ms. Alka Agrawal, Anmol Chandan, Raj Bahadur, Mrs. Anil Katiyar, K. B. Sounder Rajan, K. Nakickaraj, Sudarshan Rajan, Mahesh Kumar, Amit Sharma, Dipesh Sinha, Ms. Ayiala Imti, Advs. for the Appearing Parties.</p>   | <p>The Judgment of the Court was delivered by</p>  |  |
| <p>E      <b>ASHOK BHUSHAN, J.</b></p>   |  |  |
| <p>1. Two appeals, one by Union of India and one by Meena Bhaskar, have been filed against the Division Bench judgment of the Kerala High Court dated 06.02.2015. The writ petition under Article 32 has been filed by C. Girija seeking direction to implement the order passed</p>   |  |  |
| <p>F      by the Division Bench of the High Court and the order of the Central Administrative Tribunal in her favour.</p>  | <p>2. Brief facts necessary to be noted for deciding these appeals and writ petition are:</p>  |  |
| <p>G      The Southern Railway, Divisional Office, Personnel Branch issued a notification dated 14.10.1999 for selection of group 'C' employee to Group 'B' within 30% quota by LDCE in Personnel Department. The notification intimated total 5 vacancies(4 unreserved and 1 SC) to be filled up by limited competitive Departmental examination under 30% quota. Smt. C.Girija working as Office Superintendent Grade I, Personal Branch, Southern Railway submitted her candidature as unreserved</p> |  |  |
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category candidate. Smt. Meena Bhaskar also submitted her candidature as reserved (SC) candidate. On 09.01.2001 after written test and viva voce a select panel was issued which did not include name of C.Girija against 4 unreserved posts. Name of Meena Bhaskar was shown as selected candidate against one SC post. According to her marks C.Girija was placed at the panel as fifth candidate in unreserved category. Promotion orders were issued on 09.01.2001, candidates those included in the panel were promoted as Assistant Personal Officer. Panel for 70% quota was subsequently prepared and was also issued on 10.04.2001. Under 70% quota there were 13 vacancies (10 unreserved, 2 SC, 1 ST) for selection to the post of Assistant Personal Officer. The vacancies relate to period from 01.10.1996 to 30.09.1998. Thus, total vacancies, 18 were bifurcated into 30% and 70% quota. The panel issued for 70% quota was revised on 20.06.2007, by including additional 2 SC employees and excluding two junior unreserved employees. Subsequently, on 05.09.2007 panel dated 20.06.2007 was again revised adjusting two unreserved employees. The applicant C.Girija submitted a representation to the General Manager, Southern Railway, Chennai dated 25.09.2007 requesting for her inclusion and promotion against the post of APO against 30% quota in the panel drawn on 09.01.2001. In her representation the applicant referred to revision of the panel of 70% quota by order dated 20.06.2007 and 05.09.2007. The applicant in her representation also stated that reserving one post for SC, against 30% quota was against the norms. The representation submitted by the applicant dated 25.09.2007 was replied by the General Manager vide letter dated 27.12.2007. The General Manager in his reply stated that the orders issued by the Railways on 20.06.2007 and 05.09.2007 were relating to 70% quota with which applicant has no concern. With regard to 5 posts under 30% quota it was stated that selection was finalised on 09.01.2001 as per the reservation rules prevalent at the relevant time. The appellant aggrieved by the communication dated 27.12.2007 filed O.A. No.466 of 2009 before the Central Administrative Tribunal, Ernakulam in which the applicant Smt. Meena Bhaskar, the selected candidate was impleaded as respondent No.9. Before the Tribunal the respondents filed their reply. The Tribunal after considering the material on record disposed of the matter vide its judgment and order dated 09.11.2011. There was a delay of 560 days in filing the O.A., the Tribunal condoned the delay and decided the O.A. by passing the following order in paragraphs 11 & 12:

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- A “11. Annexure A-I dated 27.12.2007 is quashed. The respondents are directed to include the applicant in Annexure A-2 panel on the basis of her qualifying marks and to promote her notionally with effect from the date the 9<sup>th</sup> respondent has been promoted to the post of Assistant Personnel Officer. The applicant should be placed above the 9<sup>th</sup> respondent in the seniority list of APO for the year 2001. The applicant should be given regular posting as APO within a period of 60 days from the date of receipt of a copy of this order. The 9<sup>th</sup> respondent who will be displaced from the Annexure A-2 panel should be adjusted against any vacancy that arose subsequent to Annexure A-2. The period from the date of promotion of the respondent No.9 in 2001 to the date her adjustment on a regular vacancy should be regularised and appropriate orders in this regard also should be issued within the time stipulated above.
- D 12. No order as to costs.”
3. Against the order of the Tribunal, 9<sup>th</sup> Respondent, Meena Bhaskar filed Original Petition before the High Court of Kerala being O.P. (CAT) No.82 of 2012. The Union of India also filed O.P.(CAT) No.925 of 2012 before the High Court. The High Court vide its judgment dated 03.04.2012 remanded the matter to the Tribunal for fresh consideration of the relevant issues. Against the judgment of the High Court, the applicant C.Girija filed C.A.Nos.7181-82 of 2014 in this Court. This Court set aside the judgment of the High Court and remanded the matter to the High Court for determination of the controversy on merits in accordance with law. In pursuance of the judgment of this Court dated 04.08.2014, the High Court heard the parties and by judgment dated 06.02.2015 upheld the order of the Tribunal and dismissed the Original Petitions filed by the Union of India as well as Meena Bhaskar, the 9<sup>th</sup> Respondent. Aggrieved by the judgment of the High Court dated 06.02.2015 Union of India as well as 9<sup>th</sup> Respondent have filed these two appeals. The parties shall be referred to as described before the Tribunal.
4. Writ Petition No.653 of 2015 has been filed by the applicant C. Girija under Article 32 praying for direction to the respondent to fix the pay of the petitioner as per the direction of the Tribunal dated 09.11.2014 as upheld by the High Court. The applicant in writ petition

has also claimed for a direction directing the respondent to pay her full A  
retiral benefits along with interest since she retired on 31st May, 2015.

5. Shri K.M. Nataraj, learned ASG appearing for Union of India B  
submitted that the claim of applicant of inclusion in the Panel declared  
on 09.01.2001 was barred by laches and delay. The Tribunal and High  
Court committed error in entertaining the claim of the applicant and  
issuing direction for inclusion in panel. It is submitted that cause of  
action arose to applicant when the notification dated 14.10.1999 was  
issued earmarking 05 vacancies under 30% LDCE quota, out of which  
04 were unreserved and 01 was reserved. The applicant participated in  
the selection without raising any objection and it was only after more  
than 06 years, she filed a representation on 25.09.2007. By filing of the  
representation after more than 06 years, delay and laches cannot be  
condoned. The mere fact that the representation was replied on  
27.12.2007 shall not give any fresh cause of action to the applicant.

6. Learned ASG submits that the applicant having participated D  
without raising any objection regarding allocation of 01 vacancy to SC  
candidate, it was not open for her to challenge the same after such long  
delay. Learned ASG further submitted that even on merits, the case of  
the applicant has no legs to stand. It is submitted that the cadre strength  
being total 37, the total of existing vacancies, vacancies likely to arise E  
within two years as well as 30% as construction reserve, total vacancies  
were calculated as 18 and out of 18, 13 were allocated to 70% selection  
and 05 were allocated to 30% Limited Departmental Competitive F  
Examination (LDCE). Out of 05, although initially under calculation 05  
were shown to be allocated to general category but after objection by  
Nodal Officer, who was entrusted to implement the reservation, the 05  
vacancies were bifurcated into 04 unreserved and 01 reserved, which  
was approved by General Manager. Consequently, the notification was  
issued on 14.10.1999 providing for 01 SC and 04 unreserved category  
vacancies.

7. Learned counsel appearing for the applicant refuting the G  
submission of the learned ASG submits that there was no delay and  
laches on the part of the applicant. Applicant's husband has sent several  
representations right from 2002. The applicant came to know about  
several facts regarding irregularities in selection when the matter was  
being investigated by CBI. The applicant when came to know about  
relevant facts, she filed representation on 25.09.2007. The Tribunal had H

- A condoned the delay of 560 days and allowed the O.A. on merits, hence question of delay cannot be pressed in service. It is further submitted that under 30% LDCE quota, two SC category candidates were already in place namely, Shri A. Balachander and Shri J. Senguttuvan, hence no vacancy should have been allocated to SC quota under 30% selection notified on 14.10.1999. He submits that there was ample material before the Tribunal that above two SC category candidates being already working under 30% under SC quota, no vacancy should have been allocated to 30% LDCE. He submits that in spite of direction of the Tribunal and High Court, applicant never got promotion nor benefit of any pay fixation. Applicant retired on 31.05.2015. Consequently, she had to file a **Writ Petition No. 653 of 2015** seeking a direction to compute all her benefits of promotion and all retiral benefits on the promoted post.

- 8. Learned counsel appearing for the 9<sup>th</sup> respondent adopts the submission made by learned ASG Refuting the submission of the learned counsel appearing for the applicant it is submitted that the case of the applicant was highly delayed. Cause of action arose to the applicant on 14.10.1999 and 09.01.2001 and the representation was submitted by her after more than 06 years and by mere reply of the representation will not give fresh cause of action to the applicant to rake up the matter before the Tribunal. In the Tribunal and the High Court, the plea of delay and laches was pressed but both ignored the laches on the part of the applicant. On account of the promotion granted to the 9<sup>th</sup> respondent on 09.01.2001, the 9<sup>th</sup> respondent was entitled to sit back. The promotion having not been challenged within reasonable time, the promotion granted to the **9<sup>th</sup> respondent** cannot be adversely affected after such a long delay. The findings recorded by the Tribunal and High Court on the question of allocation of vacancies were also perverse.

9. Learned counsel for the parties in support of their respective submissions have relied on various judgments of this Court, which shall be referred to while considering the submissions in detail.

- G 10. From the submissions of the learned counsel of the parties and materials on record, following two issues arise for consideration:-
  - (i) Whether the claim of the applicant to be included in the Panel dated 09.01.2001 for promotion as APO was barred by delay and laches?

(ii) Whether under 30% quota of LDCE, all the 05 vacancies ought to have been made unreserved and notification dated 14.10.1999 making 04 vacancies unreserved and 01 vacancy reserved for SC was illegal? A

**Issue No.1**

11. There is no dispute between the parties that in the notification dated 14.10.1999 inviting applications for filling up of 05 posts under 30% LDCE quota, 04 vacancies were shown as unreserved and 01 as reserved for SC. The applicant submitted an application for participation in the selection but she could not be included against 04 unreserved vacancies, she being a general category candidate. There were certain complaints with regard to selection under 70% quota, with regard to which certain investigations were going on, which could be finalized in 2007. Applicant for the first time submitted representation to General Manager, Southern Railways on 25.09.2007 praying for inclusion of her name in the panel dated 09.01.2001. Copy of the representation filed by the applicant has been brought on the record, which indicate that applicant has in her representation relied on certain orders issued on 20.06.2007 and 05.09.2007 with regard to revision of the panel under 70% selection quota. With regard to 30% quota to be filled through LDCE, she stated that reserving 01 post for SC was totally against all norms. Representation was replied by Railways on 27.12.2007 stating that with regard to revision of the panel under 70% promotion quota, the applicant is not a party in any way. With regard to vacancy under 30% LDCE selection, it was indicated that the same was done as per the Rules prevalent at that time. O.A. No. 466 of 2009 was filed thereafter by the applicant, which has been decided by the Tribunal. Tribunal condoned the delay of 560 days in filing the O.A. The applicant has challenged the communication dated 27.12.2007 of the Railways which was given in reply to the representation of the applicant. The condonation of delay, thus, only meant that against the letter dated 27.12.2007, her O.A. was held to be within time. The Tribunal and High Court has not adverted to the delay, which accrued from the declaration of panel on 09.01.2001 and submitting her representation on 25.09.2007, i.e. after more than 06 years and 09 months.

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- A        12. This Court had occasion to consider the question of cause of action in reference to grievances pertaining to service matters. This Court in **C.Jacob Vs. Director of Geology and Mining and Another, (2008) 10 SCC 115** had occasion to consider the case where an employee was terminated and after decades, he filed a representation, which was decided. After decision of the representation, he filed an O.A. in the Tribunal, which was entertained and order was passed. In the above context, in paragraph No.9, following has been held:-

“**9.** The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any “decision” on rights and obligations of parties. Little do they realise the consequences of such a direction to “consider”. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to “consider”. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.”

- B        13. This Court again in the case of **Union of India and Others Vs. M.K. Sarkar, (2010) 2 SCC 59** on belated representation laid down following, which is extracted below:-

**15.** When a belated representation in regard to a “stale” or “dead” issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the “dead” issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with

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reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches."

14. Again, this Court in **State of Uttarakhand and Another Vs. Shiv Charan Singh Bhandari and Others, (2013) 12 SCC 179** had occasion to consider question of delay in challenging the promotion. The Court further held that representations relating to a stale claim or dead grievance does not give rise to a fresh cause of action. In Paragraph Nos. 19 and 23 following was laid down:-

"**19.** From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time.

**23.** In *State of T.N. v. Seshachalam*, (2007) 10 SCC 137, this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus: (SCC p. 145, para 16)

"**16.** ... filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant."

15. This Court referring to an earlier judgment in **P.S. Sadashivswamy Vs. State of Tamil Nadu, (1975) 1 SCC 152** noticed that a person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. In Paragraph No. 26 and 28, following was laid down:-

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- A       **“26.** Presently, sitting in a time machine, we may refer to a two-Judge Bench decision in *P.S. Sadashivam v. State of T.N.*, (1975) 1 SCC 152, wherein it has been laid down that: (SCC p. 154, para 2)
- B       “2. ... A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the courts to exercise their powers under Article 226 nor is it that there can never be a case where the courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters.”
- C       **28.** Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the Tribunal and accepted by the High Court.”
- D       16. On the preposition as noticed above, it is clear that the claim of the applicant for inclusion of her name in the panel, which was issued on 09.01.2001 and for the first time was raked up by her, by filing representation on 25.09.2007, i.e., after more than 06 and half years. The claim of inclusion in the panel had become stale by that time and filing of representation will not give any fresh cause of action. Thus, mere fact
- E       G that representation was replied by Railways on 27.12.2007, a stale claim shall not become a live claim. Both Tribunal and High Court did not advert to this important aspect of the matter. It is further to be noted from the material on record that after declaration of panel on 09.01.2001, there were further selection under 30% promotion by LDCE quota, in which the applicant participated. In selection held in 2005 she participated
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and was declared unsuccessful. With regard to her non-inclusion in panel in 2005 selection, she also filed O.A. No. 629 of 2006 before the Tribunal, which was dismissed. After participating in subsequent selections under 30% quota and being declared unsuccessful, by mere filing representation on 27.09.2007 with regard to selection made in 2001, the delay and laches shall not be wiped out.

17. There is one more aspect of the matter, which need to be noted. The applicant was well aware that under 30% LDCE quota, out of 05 vacancies, 04 are unreserved and 01 is reserved, which was circulated by notification dated 14.10.1999. She applied against the said bifurcated vacancies and was interviewed on 08.01.2001, panel of which was declared on 09.01.2001 and promotion was made on the same day. She having participated in the selection for promotion under 30% LDCE quota and the bifurcation of the vacancies being part of the process of selection, it was not open for her to challenge the bifurcation of vacancies into general and reserved after taking a chance to get selected. In this context, reference is made to judgment of this Court in **Ashok Kumar and Another Vs. State of Bihar and Others, (2017) 4 SCC 357**. This Court after referring to several earlier judgments have laid down following in Paragraph Nos. 13 to 18:-

“13. The law on the subject has been crystallised in several decisions of this Court. In *Chandra Prakash Tiwari v. Shakuntala Shukla*, (2002) 6 SCC 127, this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In *Union of India v. S. Vinod Kumar*, (2007) 8 SCC 100, this Court held that: (SCC p. 107, para 18)

“18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. (See *Munindra Kumar v. Rajiv Govil*, (1991) 3 SCC 368 and *Rashmi Mishra v. M.P. Public Service Commission*, (2006) 12 SCC 724.)”

- A      **14.** The same view was reiterated in *Amlan Jyoti Boroohah*, (2009) 3 SCC 227, wherein it was held to be well settled that the candidates who have taken part in a selection process knowing fully well the procedure laid down therein are not entitled to question it upon being declared to be unsuccessful.
- B      **15.** In *Manish Kumar Shahi v. State of Bihar*, (2010) 12 SCC 576, the same principle was reiterated in the following observations: (SCC p. 584, para 16)
- “16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner’s name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Reference in this connection may be made to the judgments in *Madan Lal v. State of J&K*, (1995) 3 SCC 486,*Marripati Nagaraja v. State of A.P.*, (2007) 11 SCC 522,*Dhananjay Malik v. State of Uttaranchal*, (2008) 4 SCC 171,*Amlan Jyoti Boroohah v. State of Assam*, (2009) 3 SCC 327 and *K.A. Nagamani v. Indian Airlines*, (2009) 5 SCC 515.”
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- G      **16.** In *Vijendra Kumar Verma v. Public Service Commission*, (2011) 1 SCC 150, candidates who had participated in the selection process were aware that they were required to possess certain specific qualifications in computer operations. The appellants had appeared in the selection process and after participating in the interview sought to challenge the selection process as being without jurisdiction. This was held to be impermissible.
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**17.** In *Ramesh Chandra Shah v. Anil Joshi*, (2013) 11 SCC 309, candidates who were competing for the post of Physiotherapist in the State of Uttarakhand participated in a written examination held in pursuance of an advertisement. This Court held that if they had cleared the test, the respondents would not have raised any objection to the selection process or to the methodology adopted. Having taken a chance of selection, it was held that the respondents were disentitled to seek relief under Article 226 and would be deemed to have waived their right to challenge the advertisement or the procedure of selection. This Court held that: (SCC p. 318, para 18)

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“18. It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome.”

**18.** In *Chandigarh Admn. v. Jasmine Kaur*, (2014) 10 SCC 521, it was held that a candidate who takes a calculated risk or chance by subjecting himself or herself to the selection process cannot turn around and complain that the process of selection was unfair after knowing of his or her non-selection. In *Pradeep Kumar Rai v. Dinesh Kumar Pandey*, (2015) 11 SCC 493, this Court held that: (SCC p. 500, para 17)

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“17. Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. This, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted.”

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- A This principle has been reiterated in a recent judgment in *Madras Institute of Development Studies v. K. Sivasubramaniyan*, (2016) 1 SCC 454".

18. We, thus, due to the above both the reasons, are of the view that the Tribunal and the High Court ought not to have entertained the stale claim of the applicant.

**Issue No.2**

19. Issue No.2 pertains to calculation of the vacancies. Before the Tribunal, an affidavit was filed by Deputy ChiefPersonnel Officer, Southern Railway explaining the determination of vacancies for selection.

- C The affidavit is on the record. The affidavit indicates that in selection for the period 01.10.1996 to 30.09.1998, total vacancies calculated were 18, out of which 13 was allocated to 70% regular selection and 05 vacancies to 30% LDCE quota. Initially, the calculation sheet with regard to 30% LDCE quota shown all 05 vacancies as unreserved but when Nodal Officer examined the same, he was of the view that vacancies to be consumed under 30% LDCE quota should be from point No.10 to 14 and Point No. 14 is reserved for SC. The calculation further indicates that two SC candidates Shri A. Balachander and Shri J. Senguttuvanwere already working. Thus, 05 vacancies were to be reserved for SC candidates out of cadre of 37. Two SC candidates being already working E there was shortfall of 03, for which 02 vacancies were earmarked under 70% and 01 under 30%. In this context, reference to Paragraph No. 8 to 12 of the affidavit is relevant, which are as follows:-

"8. However, the above distribution was made as if the roster point accrues from point number 9 to 13 of the roster (all these roster points are UR) for 30% selection. Whereas the 9<sup>th</sup>

- F point has already been consumed by Shri Srinivasa Raghavan who was selected and empaneled during 1996-97. Therefore, the actual point to be consumed should be from Point No.10 to 14 of which point No. 10 to 13 are UR, and 14<sup>th</sup> point reserved for SC.

- G 9. I submit that as per procedure involved in the second stage this proposal was put up to Senior Personnel Officer/ Reservation for his verification on the application of reservation rules. Senior Personnel Officer/Reservation noticed that the accrual of points should be 10 to 14 (14<sup>th</sup> point reserved for

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SC) and not as Point No.9 to 13 and he amended the proposal A  
 (Annexure-R.10) as under:-

	TOTAL	UR	SC	ST
for 70 % Regular Selection $\frac{18 \times 70}{100}$	13@	10	2	1

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@ as per 40 point roster, the point to be consumed was No.12 to 24 which includes 25C (Point No.14 & 22) and 1 ST point (Point No.17) (Annexure-A.6-page No.34 of the OA)

	TOTAL	UR	SC	ST
for 30% LDCE $\frac{18 \times 30}{100}$	5\$	4	1	--

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\$ as per 40 point roster, the point to be consumed was No.10 to 14 which includes 1 SC (Point No.14)(Annexure-A.6-page No.32 of the OA)

The amended proposal was submitted to the General Manager D through the Chief Liaison Officer viz. Chief Personnel Officer.

10. I submit that as per the 3<sup>rd</sup> stage the vetted figure as shown below was approved by the competent authority viz. General Manager on 24.10.1996 and notified accordingly:

	TOTAL	UR	SC	ST
for 70% Regular Selection $\frac{18 \times 70}{100}$	13@	10	2	1
for 30% LDCE $\frac{18 \times 30}{100}$	5\$	4	1	--

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11. I submit that the requirement of reservation in APO cadre F was as under:

Cadre Strength	Required Reservation		Available		Cadre Shortfall	
	SC (15%)	ST (7.5%)	SC	ST	SC	ST
37	5	3	2	1	3	2

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(Annexure-A.5-page No.31 of the OA)

Accordingly, as per requirement of reservation in the cadre the distribution of 18 vacancies among UR/SC/ST would be as follows:-

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	UR	SC	ST	TOTAL
	13	3	2	18

Further, the shortfall of SC was distributed among 70% and 30% selections as under by following roster:

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	UR	UR	SC	TOTAL
For 70% Regular selection	10	2	1	13
For 30% LDCE	4	1	--	5
Total	14	3	1	18

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12. I submit that the selection for the post of Assistant Personnel Officer through 30% Limited Departmental Competitive Examination is a part of 70% regular selection. Therefore, the assessment of vacancies of the 70% regular selection and Limited Departmental Competitive Examination 30% has to be taken for the period from 01.10.1996 to 30.09.1998 and there is no provision for taking vacancies accrued after 01.10.1998. Though the selection for the post of Assistant Personnel Officer through Limited Departmental Competitive Examination held during 2001, while regular 70% selection held during 1998, the assessment of vacancies is limited up to 30.09.1998 and vacancies accrued after 01.10.1998 were taken only for subsequent selection.”

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20. The Tribunal took the view that there being 02 SC candidates already available under 30% LDCE quota, no further vacancy ought to have been allocated under 30% quota for SC.

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21. The Tribunal and the High Court both have observed that any vacancy coming after the relevant period ought not to have been taken. Those observations were in context of vacancy, which arose due to promotion of A. Balchandaron 03.01.2001. In the affidavit, in Paragraph No. 12, it was clearly mentioned that assessment of vacancies is limited up to 30.09.1998 and vacancies accrued after 01.10.1998 were taken only for subsequent selection. Thus, it is clear that in computation for vacancies under 30%, no vacancy, which had arisen out of relevant period was taken. Learned counsel for the applicant has much emphasized that under 30% both, i.e., Shri A. Balachander and Shri J. Senguttuvan being available, there could not have been 01 further vacancy reserved for Sc. In this context, Paragraph No. 8 of the affidavit as

noticed above is relevant, where it is mentioned that the roster point from point number 9 to 13 of the roster was for 30% selection. But 9<sup>th</sup> point having already been consumed by Shri Srinivas Raghavan, who was selected and empaneled during 1996-97, therefore, the actual point to be consumed should be from point No. 10 to 14. Point No. 14 being reserved for SC, 05 vacancies but 30% quota were distributed accordingly and out of which 01 vacancy was allocated to SC. Thus, there was plausible explanation for determination of vacancies given by the Railways. The explanation with regard to roster point as given by the Railways has not been adverted to by High Court or Tribunal. We, thus, are of the view that explanation by the Railway was a plausible explanation, which was not such as to give a cause for interference by the Tribunal and the High Court. Thus, we are of the view that the above ground for interference as given by the Tribunal and the High Court is unsustainable.

22. At last, the learned counsel for the applicant has submitted that although applicant has retired on 31.05.2015 but due to pendency of these litigations, her retirement benefits have not been finalized. The applicant having retired on 31.05.2015 there was no impediment to compute and pay her retirement benefits without prejudice to the claim of Railways. The delay in payment of retiral benefits has to be compensated by directing payment of interest.

23. We are thus of the view that applicant was entitled for retiral benefits immediately after the date of retirement. We direct Respondent Nos. 1 to 4 in Writ Petition (C) No. 653 of 2015 to determine and pay the retirement benefits to the applicant, if not already paid, within a period of 02 months from today. We further direct that applicant should be paid interest @ 8% p.a. on retirement benefits after one month of retirement i.e. w.e.f. 01.07.2015, till the payment is made of the retiral benefits. In result, the Civil Appeal No. 1577 of 2019 and Civil Appeal No. 1578 of 2019 are allowed and the Writ Petition (C) No. 653 of 2015 is disposed of with the aforesaid directions.

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