

(2012) 09 DEL CK 0576

In the Delhi High Court

Case No : Writ Petition (C) 8955 of 2011

Baljit Singh Bahmania

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 03-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 131 DRJ 379 : (2012) 5 ILR Delhi 817

Hon'ble Judges : Siddharth Mridul, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Vinay Kumar and Ms. Namrata Singh, for the Appellant; B.V. Niren and Mr. Prasouk Jain, for the Respondent

Final Decision : Allowed

Judgement

Badar Durrez Ahmed, J.—The petitioner is aggrieved by the order dated 24.11.2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, whereby his original application being O.A. No. 4154/2011 has been rejected on the ground of limitation as well as on the ground of non-joinder of all the affected persons. The petitioner had approached the Tribunal seeking the following reliefs:-

a)quash seniority list circulated vide O.M. dated 01.08.2011 to the extent applicant has been placed at sl. No. 791 therein; and

b) direct the respondents to accord the applicant his due seniority and place him below Sl. No. 557 and above Sl. No. 558 in the seniority list circulated vide O.M. dated 01.08.2011; and

c) direct the respondents to accord all the consequential benefits to the applicant w.e.f. the date when his juniors in the cadre of AE (Civil) have been accorded such benefits; and

d) pass any such further order or direction as may be deemed fit, proper and

necessary.

2. From the above, it is apparent that the petitioner sought the quashing of the final seniority list of Assistant Engineers (Civil) in CPWD as on 01.01.2011. The said final seniority list was circulated through the Office Memorandum dated 01.08.2011 issued by the Directorate General of Works, CPWD, Government of India. The petitioner had also sought a direction from the Tribunal to place him below S.No. 557 and above S.No.558 in the said final seniority list. The petitioner had, as a consequence thereof, also prayed that he be given all the benefits with effect from the date his juniors in the cadre of Assistant Engineers (Civil) had been accorded such benefits. It is, therefore, clear that the primary challenge of the petitioner was to the final seniority list circulated vide the said O.M. dated 01.08.2011. In that seniority list, the petitioner had been placed at S.No.791 and his claim was that he ought to be placed below S.No.557 and above S.No.558.

3. The petitioner was initially appointed as a Junior Engineer (Civil) in the CPWD on 01.11.1979. He was promoted on an ad hoc basis to the post of Assistant Engineer (Civil) on 04.06.1993. The respondent No. 3 (Shree Pal Singh) was also appointed as a Junior Engineer (Civil) on 30.10.1983. It may be pointed out that the promotions to the post of Assistant Engineer (Civil) were on the basis of 50% from amongst the Junior Engineers (Civil), who had six years regular service in the grade and the balance 50% through limited departmental competitive examination.

4. A provisional seniority list was circulated by an Office Memorandum dated 04.06.2002 which had been issued by the Directorate General of Works, CPWD. The said O.M. dated 04.06.2002 was explicit that the seniority list was provisional and was subject to the final outcome of various court cases pending in various courts. In the said provisional seniority list of Assistant Engineers (Civil), the petitioner was shown at S.No.2600 and it had been indicated that he had been promoted to the post of Assistant Engineer (Civil) with effect from 29.11.1994. It was the case of the petitioner that his date of promotion as Assistant Engineer (Civil) should have been indicated as 04.06.1993 and not as 29.11.1994. According to the petitioner, this was a mistake. Because of this mistake, a person, such as the respondent No. 3 (Shree Pal Singh) who was, according to the petitioner, junior to him, was shown at S.No.2078 inasmuch as the said respondent No. 3 (Shree Pal Singh) had been indicated to have been promoted as Assistant Engineer (Civil) with effect from 17.09.1993. It was the grievance of the petitioner that the respondent No. 3 (Shree Pal Singh), who was the next immediate junior as also the other junior officers, were shown to be higher in the seniority list than the petitioner.

5. Thereafter, promotions to the post of Executive Engineer (Civil) were ordered on 12.05.2006. These promotions were from amongst the Assistant Engineers of both categories, namely diploma holders and degree holders. Since the petitioner was not amongst the list of persons who were promoted to the post of Executive Engineer (Civil) and, according to him, officers junior to him had been promoted

to that post, the petitioner submitted a representation to the Directorate General (Works), CPWD, through proper channel on 22.05.2006. In that representation, the petitioner made a categorical grievance with regard to him being wrongly placed in the seniority list on account of the fact that his date of joining as Assistant Engineer (Civil) was shown as 29.11.1994, when, according to him, it should have been 04.06.1993. He took the plea that his position in the seniority list was not correct.

6. This was followed by another representation dated 22.06.2006, which was in the nature of a reminder. Both these representations went unheeded. As such, the petitioner filed an application under the Right to Information Act, 2005 on 05.01.2007 seeking information with regard to his position in the seniority list.

7. Even this information was not forthcoming, as a result of which, the petitioner had to approach the Central Information Commission and it is only thereafter that the information sought by the petitioner had been furnished to him as would be apparent from Annexure-J to the writ petition which is a copy of an order of the Central Information Commission dated 18.06.2008. As pointed out above, the final seniority list of Assistant Engineers (Civil) in the CPWD as on 01.01.2011, was circulated by the said O.M. dated 01.08.2011. It is that final seniority list which was challenged by the petitioner by virtue of the said O.A. No. 4154 which was filed immediately thereafter, in 2011 itself.

8. The Tribunal, however, at the admission stage itself, took the view that the said O.A. was not maintainable on account of delay and laches. According to the Tribunal, the cause of action accrued to the petitioner on 01.04.2002 when the provisional seniority list of the Assistant Engineers (Civil) in the CPWD was circulated. The date of promotion of the petitioner as an Assistant Engineer (Civil) was shown in that list as being 29.11.1994 and his serial number was also indicated to be 2600 much below that of the respondent No. 3 (Shreepal Singh), whose serial number was 2078. Thus, according to the Tribunal, the petitioner was well aware that persons, such as the respondent No. 3 (Shreepal Singh), had been shown senior to him as early as on 01.04.2002 when the said provisional seniority list was circulated. The Tribunal also felt that the cause of action again accrued to the petitioner in the year 2006 when promotions were made to the next higher post of Executive Engineer (Civil) based on the seniority position indicated in the said provisional seniority list. According to the Tribunal, the claim of the petitioner in the said O.A. No. 4154/2011 was stale because the petitioner did not agitate the matter in 2002 nor did he agitate the matter in 2006 and the validity of the promotion order dated 12.05.2006 had not been challenged. The Tribunal further held that the issuance of the final seniority list on 01.08.2011 would not result in an automatic condonation of the delay / laches in respect of the original cause of action, which, according to the Tribunal, had accrued on 01.04.2002. Since the petitioner had not filed any application for condonation of delay, the Tribunal felt that it could not even examine the case from the standpoint of the petitioner having a sufficient cause for approaching

the court after the said alleged delay.

9. The Tribunal also rejected the petitioner's said O.A. No. 4154/2011 on the ground that 233 persons would be adversely affected if the prayers sought by the petitioner were to be allowed. Some of those 233 persons, according to the Tribunal, might have even been promoted to the posts of Executive Engineers (Civil) in 2006 itself. The Tribunal felt that since the petitioner had not impleaded these 233 persons, except the respondent No. 3 (Shreepal Singh), the said O.A. was liable to be rejected on account of non-joinder of necessary parties. Thus, both on the ground of delay and on the ground of non-joinder of necessary parties, the Tribunal rejected the petitioner's said O.A.

10. The learned counsel for the petitioner submitted that the Tribunal had erred on both counts. He submitted that the petitioner had been agitating his alleged wrong placement in the seniority list and that this would be evident from the representations made by him from time to time as also from the fact that the petitioner was driven to seek recourse under the Right to Information Act and ultimately to the Central Information Commission to obtain information with regard to his seniority. Therefore, according to the learned counsel for the petitioner, this was not a case where the petitioner had accepted his position in the provisional seniority list and was only agitating the matter after several years had elapsed. Furthermore, the learned counsel for the petitioner submitted that the petitioner was entitled in law to challenge the final seniority list even though he had not approached the Tribunal insofar as the provisional seniority list was concerned. He submitted that as the final seniority list had been circulated only on 01.08.2011, the said original application filed by the petitioner shortly thereafter cannot, by any stretch of imagination, be regarded as a stale claim. According to the learned counsel, the Tribunal committed a serious error in rejecting the petitioner's said original application on the ground of limitation. In support of this submission, the learned counsel for the petitioner placed reliance on the following decisions of the Supreme Court:

- 1) G.P. Doval and Others Vs. Chief Secretary, Government of U.P. and Others, ;
- 2) V.P. Shrivastava and Others Vs. State of M.P. and Others, ;
- 3) M. Pachiappan and Others Vs. S. Markandam and Others, ;

11. In response to the submissions made by the learned counsel for the petitioner on the question of limitation, the learned counsel for the respondent reiterated the stand and approach reflected in the impugned order passed by the Tribunal. In support of the plea of the respondents that the Tribunal was right in rejecting the original application on the ground of limitation, the learned counsel for the respondents placed reliance on the following decisions of the Supreme Court:

- 1) B.S. Bajwa and Another Vs. State of Punjab and Others, ;
- 2) Union of India and Others v. Tarsem Singh: 2008 (2) SCC (L&S) 765;

3) S. Sumnyan and Others Vs. Limi Niri and Others, .

12. On the second aspect of non-joinder of necessary parties, the learned counsel for the petitioner submitted that, although the petitioner had not impleaded all the 233 persons, who might have been adversely affected if an order was passed in favour of the petitioner, the petitioner had, in fact, impleaded the respondent No. 3 (Shree Pal Singh), who was, according to the petitioner, the next junior person to the petitioner. The learned counsel submitted that having done so, it was not necessary for the petitioner to implead all the persons who might be adversely affected, particularly when the number of such persons was as large as 233. He further submitted that, in any event, if the Tribunal felt that it was necessary for the petitioner to implead all the 233 persons, it ought to have given an opportunity to the petitioner to implead them. If the opportunity to implead all the 233 persons had been given by the Tribunal and the petitioner did not still implead such persons, then, perhaps, the Tribunal would have been right in dismissing the original application on the ground of non-joinder, but not otherwise. In support of these submissions, the learned counsel for the petitioner placed reliance on the following decisions:-

1) Prabodh Verma and Others Vs. State of Uttar Pradesh and Others, ;

2) V.P. Shrivastava (supra);

3) Shadi Ram Yadav Vs. Director General, CISF and Others, ;

4) Mr. S.K. Jain Vs. Mr. P.S. Gupta and Others, .

13. On the other hand, the learned counsel for the respondents, as in the case of limitation, relied upon the observations and findings of the Tribunal on the aspect of non-joinder of the said 233 persons. He supported the decision of the Tribunal that because the petitioner had not joined all the adversely affected persons, the Tribunal was well within its right in dismissing the original application on the ground of non-joinder of necessary parties.

14. Let us now examine the decisions cited on both sides on the issue of limitation. The first decision was that of the Supreme Court in the case of G.P. Doval (supra). Paragraph 16 of the said decision had been relied upon by the learned counsel for the petitioner. It reads as under:-

A grievance was made that the petitioners have moved this Court after a long unexplained delay and the Court should not grant any relief to them. It was pointed to that the provision seniority list was drawn up on March 22, 1971 and the petitions have been filed in the years 1983. The respondents therefore submitted that the Court should throw out the petitions on the ground of delay, laches and acquiescence. It was said that promotions granted on the basis of impugned seniority list were not questioned by the petitioners and they have acquiesced into it. We are not disposed to accede to this request because respondent 1 to 3 have not finalised the seniority list for a period of more than 12 years and are operating the same for further promotion to the utter

disadvantage of the petitioners. Petitioners went on making representations after representations which did not yield any response, reply or relief.

(underlining added)

15. It would be seen that in G.P. Doval (supra), the provisional seniority list had been taken out on 22.03.1971, whereas the writ petitions had been filed in the year 1983. The plea on behalf of the respondents was that the petitions should be thrown out on the ground of delay, laches and acquiescence. The Supreme Court, however, did not agree with the respondents therein on the ground that the respondents had not finalized the seniority list for a period of more than 12 years and were operating the same for further promotions to the utter disadvantage of the petitioners therein. Of course, in that case, the petitioners had gone on making representations after representations which had not yielded any response, reply or relief. In the present case also, we find that the provisional list had been circulated on 01.04.2002 and even promotions had taken place on the basis of that list, to the detriment of the petitioner. It is not as if, in the present case, the petitioner was a silent sufferer. He had, as pointed out above, made representations and was even driven to approach the Central Information Commission in order to obtain information with regard to his seniority. Of course, in G.P. Doval (supra), the final seniority list had not been published at all by the time the petitions came to be filed, but that would not make the petitioner's case any worse. On the contrary, the petitioner's case is better inasmuch as the final seniority list came to be published on 01.08.2011 and immediately thereafter, the petitioner approached the Tribunal by way of the said O.A. 4154/2011. Therefore, the decision in G.P. Doval (supra) clearly supports the petitioner's plea that he had approached the Tribunal within time.

16. The next decision referred to by the learned counsel for the petitioner is that of the Supreme Court in the case of V.P. Shrivastava (supra). In that case, in the year 1983, a provisional seniority list of Additional Directors was drawn up by the State Government, wherein ad hoc promotees were shown senior to the regular appointees like the appellants before the Supreme Court. The appellants therein filed objections to the said provisional list. Without taking a decision on the same, the State Government issued another provisional list in the year 1986, but continued the mistake which was there in the 1983 list. The appellants before the Supreme Court again put forward their grievances in 1987 and, thereafter, the seniority lists prepared in 1983 and 1986 were withdrawn. Subsequently, on 19.09.1988, yet another provisional list was brought out wherein the appellants were again shown junior to the ad hoc promotees. The appellants before the Supreme Court again filed a representation and finally on 23.12.1988 the State Government brought out the final seniority list wherein the appellants were again shown junior to the said ad hoc promotees. Thereafter, the appellants approached the State Administrative Tribunal, which, inter alia, rejected their application on the ground that the promotions in favour of the respondents therein in the year 1980 could not be challenged at that length of time.

17. On behalf of the appellants before the Supreme Court, it was argued on the question of delay and laches that the appellants did not challenge the so-called ad hoc appointments of the respondents by way of promotions, but that they merely challenged the position assigned to them in the seniority list which was finalized only in the year 1988 and, thereafter, their applications before the Tribunal in 1989 could, by no stretch of imagination, be held to be barred on the principle of delay and laches. The Supreme Court agreed with the submission made on behalf of the appellants therein by holding that as the final gradation list was prepared on 23.12.1988 and the appellants had approached the Tribunal in 1989, the question of delay did not arise. The exact words used by the Supreme Court in this connection were as under:

19. So far as question of delay and laches is concerned, as we have noticed earlier the final gradation list was prepared only on 23.12.1988 and the appellants had approached the Tribunal in 1989 and therefore the question of delay does not arise. In the aforesaid premises the impugned order of the Tribunal is set aside and this appeal is allowed.

18. So, it is seen that in the case of V.P. Shrivastava (supra) also, the Supreme Court took into account the starting point to be the issuance of the final gradation list. In the present case, as we have already pointed out above, the final seniority list came to be circulated on 01.08.2011 and shortly thereafter in 2011 itself the petitioner had approached the Tribunal by way of the said O.A. No. 4154/2011. Thus, in view of this decision also, we do not see as to how the petitioner's said O.A. could have been dismissed on the ground of delay and laches. This is all the more clear from the observations of the Supreme Court in M. Pachiappan (supra), wherein it has observed as under:

After the publication of the final seniority list, the provisional seniority list gets substituted by the final list.

Thus, the provisional seniority list of 01.04.2002 got substituted by the final seniority list of 01.08.2011. In these circumstances, it would be incongruous to hold that the petitioner could not challenge the final seniority list. If it was open to the petitioner to challenge the final seniority list, then, it is clear that he did so well within time.

20. We must also deal with the decisions which were cited by the learned counsel for the respondents. The first of them being the case of B.S. Bajwa (supra). The facts of that case, as indicated in the decision of the Supreme Court itself, are as under:

3. The material facts in brief are this. Both B.S. Bajwa and B.D. Gupta joined the Army and were granted Short Service Commission on 30th March, 1963 and 30th October, 1963 respectively when they were students in the final year of the Engineering Degree Course. B.S. Bajwa graduated thereafter in June, 1963 and B.D. Gupta graduated in 1964. On being released from the Army B.S. Bajwa joined the PWD (B&R) on 4.5.1971 and B.D. Gupta joined the same department

on 12th May, 1972. Their position in the gradation list was shown throughout with reference to these dates of joining the department. It is sufficient to state that throughout their career as Assistant Engineer, Executive Engineer and Superintending Engineer both B.S. Bajwa and B.D. Gupta were shown as juniors to B.L. Bansal, Nirmal Singh, G.R. Chaudhary, D.P. Bajaj and Jagir Singh. It is also undisputed that B.L. Bansal, Nirmal Singh, G.R. Chaudhary, D.P. Bajaj and Jagir Singh got their promotions as Executive Engineer select grade and promotion as Superintending Engineer prior to B.S. Bajwa and B.D. Gupta. It is obvious that the grievance, if any, of B.S. Bajwa and B.D. Gupta to their placement below B.L. Bansal, Nirmal Singh, G.R. Chaudhary, D.P. Bajaj and Jagir Singh should have been from the very inception of their career in the department, i.e. from 1971-72. However, it was only in the year 1984 that B.S. Bajwa and B.D. Gupta filed the aforesaid writ petition in the High Court claiming a much earlier date of appointment in the department. The learned Single Judge allowed the writ petition which led to Letters Patent Appeal No. 424/86 being filed by B.L. Bansal, Nirmal Singh, G.R. Chaudhary, D.P. Bajaj and Jagir Singh before a Division Bench of the High Court.

In the backdrop of the aforesaid facts, the Supreme Court observed as under:-

7. Having heard both sides we are satisfied that the writ petition was wrongly entertained and allowed by the Single Judge and, therefore, the judgments of the Single Judge and the Division Bench have both to be set aside. The undisputed facts appearing from the record are alone sufficient to dismiss the writ petition on the ground of laches because the grievance made by B.S. Bajwa and B.D. Gupta only in 1984 which was long after they had entered the department in 1971-72. During this entire period of more than a decade they were all along treated as junior to the other aforesaid persons and the rights inter se had crystallised which ought not to have been re-opened after the lapse of such a long period. At every stage the others were promoted before B.S. Bajwa and B.D. Gupta and this position was known to B.S. Bajwa and B.D. Gupta right from the beginning as found by the Division Bench itself. It is well settled that in service matters the question of seniority should not be re-opened 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.

20. The learned counsel for the petitioner had placed strong reliance on the observations of the Supreme Court to the effect that 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. However, in our view, this decision does not, in any way, hurt the case of the petitioner. This is so because the Supreme Court made the above observations with reference to a "settled position" with regard to seniority. However, seniority based on a provisional list

cannot be regarded as a settled position unless and until the final seniority list is published. Therefore, this decision of the Supreme Court would be of no use to the respondents. The next decision on which the learned counsel for the respondents placed reliance was that in the case of Tarsem Singh (supra). The learned counsel for the respondents had specifically placed strong reliance on the observations contained in paragraph 5 thereof. The same, to the extent relevant, reads as under:

5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches / limitation will be applied.

21. Here again, we find that the Supreme Court's observations are in the context and backdrop of "settled rights of third parties". In the present case, the seniority and promotions were on the basis of a provisional seniority list which only came to be settled by the final seniority list circulated on 01.08.2011. Therefore, this decision of the Supreme Court in the case of Tarsem Singh (supra) also does not come to the aid of the respondents. Similar is the case with the Supreme Court decision in the case of S. Sumnyan (supra). The provisional seniority lists in question in S. Sumnyan (supra), as would be evident from paragraph 29, were never challenged. But, in the present case, we find that, although the petitioner did not approach the Tribunal until the publication of the final seniority list, it is not as if, he was a mere spectator inasmuch as we have already noticed the fact that he had submitted several representations and was even driven to approach the Central Information Commission to obtain information with regard to his seniority position. Therefore, on facts, the Supreme Court decision in S. Sumnyan (supra) is clearly distinguishable and would not run counter to the submissions made on behalf of the petitioner.

22. As a result of the foregoing discussion, we find that the Tribunal ought not to have dismissed the petitioner's said original application at the threshold on the ground of delay and / or laches. The question of the Tribunal considering the issue of sufficiency of the cause for such "delay" would obviously not arise and

there would obviously be no reason for the petitioner to have filed a condonation of delay application inasmuch as the original application in itself was not beyond time.

23. We are now left to consider the other aspect with regard to non-joinder of the 233 persons [except the respondent No. 3 (Shree Pal Singh)], who would have been adversely affected by any order passed in favour of the petitioner. The submissions of the learned counsel on this aspect of the matter have already been noted above. We shall now consider the decisions which had been placed for our consideration by the learned counsel for the petitioner. The first of those decisions is of the Supreme Court in the case of Prabodh Varma (supra). Para 28 of the said decision is relevant and the same reads as under:

28. The real question before us, therefore, is the correctness of the decision of the High Court in the Sangh's case. Before we address ourselves to this question, we would like to point out that the writ petition filed by the Sangh suffered from two serious, though not incurable, defects. The first defect was that of non-joinder of necessary parties. The only respondents to the Sangh's petition were the State of Uttar Pradesh and its concerned officers. Those who were vitally concerned, namely, the reserve pool teachers, were not made parties-not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties.

24. From the above extract, two things are clear. First of all, all the affected persons need not be added as respondents as some of them could be impleaded in a representative capacity if the number of such persons is too large. Secondly, when such a situation arises before a court and, for that matter before the Tribunal, an opportunity should be given to the petitioner to implead the necessary parties or at least some of them in a representative capacity. If the petitioner still refuses to do so, then the petition could be dismissed for non-joinder of necessary parties and not otherwise. In the present case, no such opportunity was offered by the Tribunal to the petitioner and, therefore, we are of the view that the Tribunal erred in dismissing the original application at the admission stage itself. Another important aspect which we must not lose sight of is the fact that the petitioner had, in fact, impleaded one such person, namely,

the respondent No. 3 (Shree Pal Singh), who was the person, according to the petitioner, immediately below him in seniority. Although, it is true that the petitioner has not stated in the original application that the respondent No. 3 was impleaded in a representative capacity, but it is also clear that the respondent No. 3 would, while defending his case, also be espousing the case of all the 233 persons, who were similarly situated to him.

25. The next decision referred to by the learned counsel for the petitioner was that of the Supreme Court in V.P. Shrivastava (supra). The Supreme Court had placed reliance on an earlier decision in the case of A. Janardhana Vs. Union of India (UOI) and Others, , wherein it had observed as under:

15. ... In this case, appellant does not claim seniority over particular individual in the background of any particular fact controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing-up the impugned seniority list are invalid and illegal and the relief is claimed against the Union government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus the relief is claimed against the Union Government and not against any particular individual. In this background, we consider it unnecessary to have all direct recruits to be impleaded as respondents.

It also placed reliance on the decision in Prabodh Verma (supra). In this backdrop, the Supreme Court, in V.P. Shrivastava (supra) held as under:-

17. Even in Janardhana case referred to supra, this Court also rejected a similar objection on the ground that 9 of the direct recruits having been impleaded as party, therefore the case of direct recruits has not gone unrepresented and therefore the non-inclusion of all the 400 and odd direct recruits is not fatal to the proceedings.

18. In the aforesaid circumstances we have no hesitation to come to the conclusion that the Tribunal was wholly in error in coming to the conclusion that the appellants application becomes unsustainable in the absence of all the promotees being impleaded as party.

26. This decision also, which is in the same line as that of Prabodh Verma (supra), does support the plea advanced by the learned counsel for the petitioner.

27. In Shadi Ram Yadav (supra), a Division Bench of this court, following the decision of the Supreme Court in A. Janardhana (supra), observed as under:-

12. The law laid down in A. Janardhan's case (supra) applies on all the fours to the case at hand. The petitioner need not join all the persons in the seniority list as parties to the petition. He has joined S.C. Wadhwa the person next below the petitioner in the seniority list of the year 1985 as party to the petition and by way of illustration. That is sufficient.

28. In S.K. Jain (supra) also, a Division Bench of this court followed, inter alia,

the Supreme Court decision in A. Janardhana (supra) and observed as under:-

13. To support their contentions Mr. P.H. Parekh as well as Mr. G.D. Gupta placed reliance on various decisions. After going through those decision and the arguments of the learned counsel, we are of the view that when there is a challenge to the principle of determination of seniority the persons who are likely to be adversely affected are not necessary parties. They are at the most a proper party. Their absence is not fatal to the maintainability of the writ petition. In this regard we are supported by the decisions of Supreme Court in the case of (i) A. Janardhana Vs. Union of India (UOI) and Others, ; (ii) State of U.P. and Anr. v. Ram Gopal Shukla 1981 (2) SLR 3 and (iii) The General Manager, South Central Railway, Secundrabad and Anr. v. A.V.R. Siddhanti and Ors. 1974 (1) SLR 597. In view of the law laid down by the Supreme Court we find that non impleading of each and every Assistant or Senior Assistants was not necessary nor fatal to the writ petition.

29. It is clear from the above mentioned decisions that the Tribunal was in error in dismissing the petitioner's original application on the ground of non-joinder of necessary parties without first giving an opportunity to the petitioner to implead all the so-called persons who would be adversely affected. The Tribunal also did not take note of the fact that one such person, namely, the respondent No. 3 (Shree Pal Singh) had, in any event, been impleaded by the petitioner. This in itself was sufficient in the view taken by this Court in Shadi Ram Yadav (supra). For all these reasons, we are of the view that the Tribunal has erred on both counts, that is, on the point of limitation as well as on the point of non-joinder of parties. The impugned order is set aside and the said O.A. No. 4154/2011 is restored. The Tribunal shall dispose of the same on merits. The writ petition is allowed accordingly. There shall be no order as to costs.