
(2006) 05 DEL CK 0079
In the Delhi High Court
Case No : WP (C) No. 4023 of 1998

Dr. Lakho Mal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-05-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 05 DEL CK 0079

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Party-in-Person, for the Appellant; Sanjay Karol and Arijit Mazumdar, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—This is a Petition under Article 226 of the Constitution of India claiming directions that the petitioner was promoted as Marketing Manager, Chief Marketing Manager, General Manager and Chief General Manager, in an Ad hoc manner without fixing the respondents' seniority and keeping his seniority influx in each post and at the same time promoting his juniors to higher posts. The petitioner also impugns the inaction of the respondents in not holding review DPCs, after granting him ante-dated seniority. The petitioner also claims to be aggrieved by the respondents' denial of promotion to him, to the post of Director and Chairman, Managing Director, State Trading Corporation (STC).

2. On 4.3.1972, STC advertised vacancies for Dy. Marketing Manager in the then pay-scale of Rs. 740-1250 with the qualifications "experienced graduates with specialization in Economics or Statistics, etc," The posts were exclusively reserved for Scheduled Caste and Scheduled Tribe candidates. The Petitioner applied since he had experience and Master Degree in Maths with specialization in Statistics with 69% marks in Statistics in M.Sc. He appeared in interviews on 5.8.1972 and 12.10.1972. He was informed on 16.12.1972 by the STC that his name has been kept on panel in regard to the advertised post and that he would

be called as and when need arose. Later, on 29.1.1973, the petitioner was appointed to a lower and unadvertised post of Grade II which he did not accept. It is claimed that he addressed several representations and the Commerce Ministry which advised STC to consider appointing the Petitioner on the advertised post in the original scale Rs. 740-1250. No action was however taken, and the Petitioner joined as Deputy Marketing Manager-II (DDM-II) on 14.9.73 at revised scale of Rs. 700-1250 with the basic pay of Rs. 740/-.

3. The petitioner alleges that he detected and reported corrupt practices of double supplies of imported material valued at Rs. 16 lakhs to 51 Businessmen and initiated action with the result that unlawful interest of 51 businessmen suffered heavily and officers of STC faced vigilance enquiry and punishment, on 25.3.1974. It is alleged that on 14/17.6.74 the STC Board selected the Petitioner again for Dy. Marketing Manager Grade-I post whereas Sh. I.D. Choudhary was rejected for DMM-I and was selected for lower post of DMM-II. However, before issuance of the promotional order, on 22.6.1974, a complaint was registered against him, on allegations of a businessman of the petitioner having accepted Rs. 1000/- as illegal gratification. On 27.6.1974, the STC, without holding any enquiry terminated the services of the petitioner, and withheld the appointment for DMM-I post for which he had been earlier selected.

4. The petitioner represented against his termination, on various dates in 1974. In November, 1976 the STC advertised 8 backlog vacancies for SC/ST and circulated the vacancies for internal candidates also for which petitioner applied. It is alleged that on 3.8.1977, all seven SC/ST candidates, who were the petitioner's junior officers available in STC including Sh.I.D. Choudhary were considered and promoted/ appointed as Marketing Manager w.e.f. 3.8.77 with seniority as existing in the grade of the post of DMM-I post; the petitioner was not however, considered. The relative seniority positions of such officials have been indicated by the petitioner, in a chart which is reproduced below:

DMM-I Date of promotion as MM

- 1.Sh. Zelian 3.10.74 3.8.77 Resigned
- 2.Sh. B.R. Ghanta (SC) 3.10.74 3.8.77 Resigned
- 3.Sh. Bhanu Parmar (SC) 15.10.74 3.8.77 Resigned
- 4.Sh. ID Choudhary (SC) 25.11.74 3.8.77
- 5.Ms T. Shering (ST) 1.11.74 3.8.77 Resigned
- 6.Sh. B.R. Mina (ST) 8.4.76 3.8.77
- 7.Sh. Tek Chand (SC) 1.11.76 3.8.77

It is stated that a DMM-II, one Sh. Shelvam was also selected as DMM-I in the selection of 14-17 June 1974 and appointed as DMM-I from 15.7.74, but he left and did not continue.

5. On 28.10.1977, the Special Judge CBI, rejected the case against the petitioner and acquitted him. The petitioner submitted the judgment to the STC and requested for his reinstatement including his promotion/appointment as MM w.e.f. 3.8.77 when his all SC/ST juniors were promoted/ upgraded, one SC vacancy of MM was lying vacant. The petitioner alleges that on 7.1.1978, STC appointed one outsider Sh. T.S. Sagar on 7.1.78 on the vacant post of MM ignoring his claim. On 4.3.1978, the STC offered fresh appointment, to the petitioner as DMM- II, which was accepted by him, petitioner joined on 5.4.78 under protest without prejudice to his rights. He was subsequently, on 1.9.1978 selected for the post of DMM-I. This position too was accepted by him, under protest.

6. It is alleged that in 1979, the Petitioner's other colleagues and juniors were promoted as MM. On 29.2.1980, the STC cleared his probation as DMM- I on the basis of his good performance. The petitioner met the Chairman, National Commission for SC/ST, Union Ministry of Home and explained his case in detail and submitted his representation. It is further alleged that the Commission, on 22.1.1981, wrote to the Commerce Minister, who sought the comments from the STC. He further alleges that the STC took a vindictive attitude, stating that the petitioner was unpunctual, and had misplaced some files, etc; these charges, it is alleged were never communicated to him. The Commerce Ministry denied the claims of the petitioner, on the basis of the STC's false stand. It is also alleged that on 28.2.1981 STC promoted large number of his juniors (including a Pandalai) as MM overlooking the petitioner; it is alleged that the petitioner faced harassment, and was transferred to Kandla, on 15.5.1982; however, the transfer Orders were "frozen" on 15.7.82. The petitioner alleges that absolutely unfounded adverse ACRs were communicated in July 1982, and on 21.8.1982 he represented against the remarks.

7. It is averred that in January, 1983 due to intervention of National Commission for SC/ST and Home Ministry, STC sought legal opinions from Ashok Sen, former Law Minister of India and then Attorney General of India who both opined that the termination order and withholding of his appointment for the post of DMM-I were illegal. On 9.3.1983, STC instead of fully reinstating the petitioner and doing complete justice, by order granted him service continuity from his date of joining 14.9.73 and seniority in DMM-I from 15.10.74 above Sh. I.D. Choudhary as per selection dt. 14/17.6.74. Later, on 21.3.1983, the STC considered the petitioner for Chief Marketing Manager (CMM) CMM-I(GM) appointment/post. He alleges that despite selection, STC issued appointment orders to other 4 candidates. They were allegedly less qualified and less experienced as CMM-I/ GM, having been recruited in STC as CMM in 1979 ignoring the petitioner at that time. The petitioner represented against this supersession, on 14.4.1983. Instead of granting justice, the STC, on 7.5.1983, communicated what are termed as baseless remarks in his CR for the year 1983. Petitioner made two representations against the remarks in CRs, but STC to no avail. Later, on 8.9.1983, STC expunged the remarks from CR.

8. The STC, by an order dated 20.10.1983, antedated the petitioner's seniority as DMM-I w.e.f. 15.7.74 instead of 15.10.74, granted earlier. On 2.7.1984, the Petitioner's junior Sh. I.D. Choudhary was promoted as CMM and posted as Branch Manager, STC Kandla. On 4.11.1985, the Petitioner was constrained to join at STC Kandla under his two juniors MM(A.K. Majumdar) and CMM/BM(I.D. Choudhary). On 28.4.1986, the STC promoted the petitioner as MM by an order without granting him due seniority; he accepted the post, under protest, on 1.5.1986. He alleges that on 15.5.1986 the STC assured him of due seniority, after confirmation. Later, on 17.6.1986 the petitioner was declared to have successfully completed probation, but his seniority was not fixed. By two orders dated 1.1.1987 and 1.7.1987, the petitioner's juniors were promoted as CMMs. On 6.7.1987, the STC wrote to the petitioner that his seniority as MM w.e.f. 3.8.77 was under consideration and orders would be communicated. In the meanwhile, on 1.1.1988 another junior official, Sh. A. Pandalai was promoted as CMM.

9. The STC by its order dated 23.2.1988 granted seniority to the petitioner in the MM cadre w.e.f. 28.2.81 instead of 3.8.77 after promoting his all juniors of the later batches, without review of earlier DPCs. His other juniors were promoted on 1.7.1988, as CMM. The petitioner claims that on 4-11-1988, due to his representations, the STC promoted him as CMM, with wrong seniority w.e.f. 1.7.88 which the petitioner accepted under protest. On 24-25.11.88 the petitioner's junior, Sh. I.D. Choudhary was promoted as General Manager (GM). It is claimed that the petitioner was considered, but he was determined ineligible, due to a policy proposal approved by Board of Directors on 24-25.11.88, that only such CMM, with 5 years service in CMM cadre would be considered. Subsequently, on 10.10.90 and 25-1-1993, other officials junior to the petitioner were promoted as GM. On 25.1.93, the STC called the petitioner for interview for the post of GM post along with other 4th batch junior officials, when petitioner and Mr. Rizvi both were not considered; STC however, considered and issued promotion orders to other 7 juniors.

After repeated representations, the petitioner and Shri Rizvi were considered and promoted as GM, on ad-hoc basis, on 2.7.93. The petitioner accepted the post, under protest, on 5.7.93. On 12.1.95, the STC called the petitioner's juniors for consideration for promotion as CGM. Several juniors were promoted.

10. The petitioner has outlined in some detail, the steps taken by him, and the inter se correspondence, between him, STC, and the National Commission of Backward Classes, on the subject of his rightful promotion and assignment of seniority. On 26.2.96, STC promoted the petitioner as CGM; he accepted it under protest. He alleges that despite assurances, his seniority as CGM was not properly decided, and that on 26.8.96, the Public Sector Enterprises Board (PESB) considered his junior Sh. A. Pandalai for the post of Director. Despite the petitioner's protests, on 17.9.97, Shri Pandalai was appointed as Director. This again led to a fresh grievance; on 16.10.97 the petitioner wrote to New

Chairman (STC) and Commerce Secretary and copy to New Chairman (STC) about partial work allocation etc. On 27.10.97, certain adverse remarks were communicated by STC in the petitioner's CR for year 1996-1997. On 26.11.97, the Petitioner represented against the baseless remarks and STC took no action.

11. The petitioner alleges that between the year 1997 and 2001, though on at least three occasions, vacancies in the grade of Director, STC, arose, his name was overlooked, and the candidature of junior officials were accepted. He alleges that on 12.7.2001, the STC, belatedly issued the regularization order for Petitioner's promotion as CGM with effect from 26.2.1996 after five and half years without granting him due seniority. Between September 2001, and April 2002, about four vacancies in the post of Director, STC arose, but the petitioner was not considered. He alleges that on 5.10.02 vacancy of CMD(STC) fell vacant due to retirement of Dr. S.M. Dewan, and additional charge of CMD(STC) post was given to Sh. A. Pandalai as per order dt. 7.10.03. On 12.3.03, Dr. A. Pandalai was given extension as STC Director for 5 years. On 4.4.2003, an order was issued, that Sh. Pandalai shall continued to hold charge beyond 5.10.03 till further orders.

12. During pendency of these writ proceedings, the petitioner attained the age of superannuation prescribed in STC. He sought and was granted leave to amend the writ petition, to say that in 2003, though his name could be considered for the post of Director, STC and later as CMD, STC, the respondents, in a mala fide manner, chose to show the vacancies as having occurred in 2003, though they had arisen in 2001. It is alleged that showing the vacancies as from a later date was solely to deprive his legitimate consideration to the posts concerned.

13. Dr. Lakho Mal, the petitioner argued the case himself. He submitted that the sequence of events, right from inception showed that the respondents were hell bent on depriving him of service benefits. First, he was involved in a false bribery charge, which led to illegal termination in 1974. The petitioner was however acquitted honorably ;resultantly the STC was under an obligation not only to reinstate him, but also restitute him in all respects, by granting consequential benefits, including proper seniority, and promotions, in the grade of MM, CMM, GM, CGM and later Director.

14. The petitioner urged that the respondents deliberately created situations which ensured that his claim for promotion to each succeeding position was held up, delayed, and obstructions were deliberately and calculatedly created, to deny his rightful place in STC. It was contended that the STC acted in a mala fide manner, right from inception; the petitioner was not appointed to the post for which he was interviewed, and to a lower post. Despite his representations, nothing was done, and instead, the STC arbitrarily terminated the petitioner's service, without holding even a semblance of an enquiry. During the period he was on trial, the STC recruited, and later promoted persons, to the post of DMM-I and later, MM.

15. The petitioner further submitted that upon his honourable acquittal, the STC was under an obligation to grant him complete restitution, which meant that he had to be restored to the post, and given full seniority, and all consequential benefits. Despite obtaining legal opinion from the highest quarters, including the Attorney General, the STC took no action in granting all the benefits. It was submitted that the antedating of the appointment, effected in 1983, was an instance of too little, too late, because by then, on the basis of pre-existing seniority, which had not been revised, the petitioner's juniors had stolen a march over him; he was successively overlooked for promotions, and given higher posts/ grades much after his juniors were promoted.

16. It was submitted that the respondents deliberately delayed consideration of the petitioner's promotion, when it fell due in the normal course, on the pretext that he had been given adverse confidential reports; even such a stand cannot be justified, because the remarks were later expunged. The petitioner urged that even after promotion as MM, to higher posts too, the STC brazenly displayed bias. He had to approach the National Schedule Castes and Schedule Tribes Commission, and the National Backward Classes Commission, for redressal of his just grievances. Those bodies had intervened on at least three occasions, leading to the Central Government desiring action to redress the petitioner's grievances; nevertheless the STC continued to show a kind of institutional bias, which resulted in arbitrariness, and hostile discrimination.

17. The petitioner submitted that the further action of the STC, in not considering him for the post of Director, on the ground that vacancies were for a later period, which rendered him ineligible, and that he had not put in five years' service, too, were arbitrary.

18. The petitioner submitted that every action of the State or its agencies has to be just, fair and reasonable, and has to be non-arbitrary. The STC had flouted all can one of fair play, and the petitioner Therefore, has to be given promotions from the dates his juniors were promoted in each of the lower grades/ post, and also granted notional and consequential benefits.

19. Mr. Sanjay Karol, learned senior counsel appearing for the respondent STC, on the other hand, relied upon the counter affidavits, and also contended that the petitioner has no justifiable grievance. It was argued that the petitioner has, in an untenable manner, and in the garb of seeking setting aside/quashing of an order dated 12-081998, which is not an order but a reply to his representation, claimed multiple reliefs which pertain to different causes of action spanning over two decades. Counsel contended, by placing reliance on several judgments of the Supreme Court that in service matters, public interest is best subserved if the court is approached within reasonable time. It is contended that the claim for a retrospective or ante dated appointment in a higher grade with effect from the petitioner's original date of entry in the organization is barred by laches and unreasonable delay, beside its untenability

20. It was pleaded and urged on behalf of STC that the the grievance of the petitioner about not implementing the legal opinions rendered, are not justiciable. It was urged that whether a advice tendered by an expert, like a lawyer on a particular aspect ought to be followed was a matter of administrative discretion and the court could not delve into the issue so long as the action complained of was supported by some reasons.

21. It was submitted that though the petitioner was initially appointed in the year 1973, as DM-II, his services were terminated since he was charged in the criminal proceeding. Upon his acquittal, in 1977, he was reinstated to the services. Some posts of DM-I were advertised for direct recruitment in April 1978; the petitioner applied, being eligible in the reserved quota earmarked for the purpose. He was selected and offered appointment to the post in September 1978 which he accepted. He sought for in order of continuity in-service from 1973. The committee constituted for the purpose after considering opinions obtained from legal counsel, decided on compassionate basis that the petitioner may be given the benefit of continuity of service from the initial rate of appointment with the respondent as Deputy Marketing Manager-II from 15-10-1974 when the other selected with him were offered fresh appointment. It was also decided that the petitioner should be given benefit of salary for the period he was out of service. Pursuant to this decision, an order was issued on 09-03 1983 (made effective from 14-09-1973), treating the petitioner as DM-II with effect from 15-09-1974. it was submitted that pursuant to directives of the board, the Senior Personnel Committee in its meeting held on 26th of August 1983 and on 12 September 1983 considered the petitioner's case and decided that his contention as Marketing Manager from the date of appointment of his junior, Shri Parmar, i.e 3 August 1977, could not be given. It was however decided to re-fix seniority in the grade of Deputy Marketing Manager as 15 July 1974, instead of 15 October 1974. In respect of his claim for promotion to the post of Marketing Manager, with effect from 3 August 1977 it was decided that Shri Parmar along with others were selected by the Committee, as direct recruits, pursuant to an open advertisement issued to fill the direct recruitment quota, reserved for SC/ST candidates. The petitioner's contention that he ought to be promoted as Marketing Manager, from the date of appointment of his juniors Therefore was rejected. The petitioner's case for promotion was also not found acceptable on account of his service records. It was also contended that for the years 1984 and 1985, the petitioner's case was considered by duly constituted Departmental Promotion Committees but they did not find him suitable for promotion as Marketing Manager. Ultimately on 31st December 1985, it was decided that his performance ought to be watched for a period of six months and that his case would be put up before a DPC to be constituted exclusively for him. Eventually, the petitioner's case for promotion was considered, exclusively, on 24 April 1986; that the DPC recommended his promotion as Marketing manager; the promotion was granted by an order dated 28 April 1986.

22. Counsel contended that in February 1998 on further review of the petitioner's case and taking in view all his representations for granting seniority, STC again reviewed the position on purely compassionate basis and as a special case granted fresh fixation of his seniority in the grade of Marketing Manager with effect from 28 February 1981 instead of 01-05-1986, when he was actually promoted. After this event, his case was considered by the Departmental Promotion Committee for time on promotion as Chief Marketing Manager; he was however not found suitable. The matter was further reviewed and STC promoted him as Chief Marketing Manager from the same date as other Marketing Managers in terms of the time bound promotion policy.

23. It is contended that in May 1988, the post of General manager was advertised for direct recruitment exclusively from amongst reserved category candidates; 61 persons applied but 14 were shortlisted out of which 12 appeared before the Selection Committee including seven departmental candidates. The petitioner also appeared. The Selection Committee comprised of two directors of STC and two outside experts. Shri I.D. Chowdhary and one more person were recommended, in order of merit. The petitioner was considered for promotion on 25-01-1993, by a DPC; he was found unsuitable. Upon his representation, the matter was reconsidered and his name along with others was recommended for promotion on temporary basis with effect from 2 July 1993; he was subsequently regularized with effect from 13 January 1995, when a regular vacancy arose in the grade; he was re-assigned seniority with effect from 02-07-1993, the date when he was initially promoted on temporary basis as general manager.

24. It was lastly contended that the petitioner's grievance is that he be granted seniority in the grade of Marketing Manager, with effect from the date others were appointed, could not be acceded to, for the reason that the petitioner's juniors had competed in the direct recruitment quota, and judged suitable. The petitioner was not empanelled at that time; he was promoted subsequently. All these grievances had been examined as far back as in 1983 and later in 1988, and the court ought not to exercise discretion in re-opening such stale matters.

25. As far as promotion and seniority in the grade of General Manager were concerned, learned Counsel contended that like in the case of Marketing Manager, the so- called juniors had competed, along with the petitioner, in a direct recruit quota, and they were found suitable; no grievance could be raised that they were unfairly given a march over the petitioner's claims. It was contended that the post of Director is one of the highest positions in the organization, and had to be filled exclusively on the basis of selection and merit. The STC was bound to follow, and adhere to the guidelines which imposed age restrictions. The petitioner could not claim a justifiable grievance on this score, as also in the case of non-consideration for the post of Chairman and Managing Director.

26. The above somewhat complicated factual narrative reveals three distinct strands of disputes or grievances raised by the petitioner. One, the denial of

proper seniority in the grade of Marketing Manager, with a grievance that his juniors were appointed, and permitted to steal a march over his claim, in 1977. Linked with this is the timing of the Time-bound promotion to the cadre of Chief Marketing Manager. Two, the question whether the petitioner was wrongly overlooked for promotion to the post of General Manager and three, whether his claim for further promotion as Director and Chairman, Managing Director are justified.

27. The factual narrative shows that for the posts of Marketing Manager, and General Manager, the petitioner is claiming seniority over direct recruit candidates. Aside from projecting the initial termination and the harsh fallout, the petitioner has not pleaded as to why and under what provisions of law, or service rules, he, as promotee, not competing in the direct recruitment process, can maintain a claim for seniority and automatic promotion from the dates his juniors in the grade of DM-I were appointed. There is no dispute that the post of Marketing Manager was advertised, for direct recruitment; the procedure permitted serving officials to compete. The petitioner has not shown any disability attaching to his conduct, or any rule, which debarred him from participating in the process. Thus, while the others participated and were successful, the petitioner was able to secure promotion, only in 1983; the date of promotion, at his request, was ante dated to 1981. All these events occurred in 1988. The petitioner made no attempt to approach the court or seek redressal of his grievances immediately thereafter. Therefore, I am of the opinion that the Court is precluded from examining the merits of such a claim.

28. As regards the petitioner's claim for rightful seniority and promotion as General Manager is concerned here too, what is apparent is that the post was advertised for direct recruitment in May 1988. The petitioner applied, and participated in the direct recruitment process. However he was not selected or empanelled. Eventually, he was promoted as a temporary General Manager, in the promotional quota, in 1993 later regularized in 1995, with effect from the initial date of temporary promotion. Having participated in the direct recruitment process, albeit un-successfully, the petitioner, in the absence of any rule or binding circular, cannot turn around and state that he ought to be nevertheless treated as senior to those who were selected, merely because within the organization, they happened to be his juniors. I am of the considered opinion that principles of laches, and acquiescence bar the petitioner from making a grievance on this issue.

29. In matters of appointment, seniority and promotion, the importance of a litigant approaching the court within reasonable time, cannot be underscored. The public interest in ensuring that service disputes are settled quickly, and the employer as well as the official get on with their roles assigned in society, without disputes that tend to fester and affect the working of institutions, is paramount. The Supreme Court, in K.R. Mudgal and Others Vs. R.P. Singh and Others, held as follows:

Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the government servants created by the writ petitions filed after several years as in this case. It is essential that anyone who feels aggrieved by the seniority assigned to him should approach the court as early as possible as otherwise in addition to the creation of a sense of insecurity in the minds of the government servants there would also be administrative complications and difficulties. Unfortunately in this case even after nearly 32 years the dispute regarding the appointment of some of the respondents to the writ petition is still lingering in this Court. In these circumstances we consider that the High Court was wrong in rejecting the preliminary objection raised on behalf of the respondents to the writ petition on the ground of laches. The facts of this case are more or less similar to the facts in *R.S. Makashi v. I.M. Menon*. In the said decision this Court observed at p. 100 of the Reports thus: (SCC p. 400, para 30)

In these circumstances, we consider that the High Court was wrong in overruling the preliminary objection raised by the respondents before it, that the writ petition should be dismissed on the preliminary ground of delay and laches, inasmuch as it seeks to disrupt the vested rights regarding the seniority, rank and promotions which had accrued to a large number of respondents during the period of eight years that had intervened between the passing of the impugned resolution and the institution of the writ petition. We would accordingly hold that the challenge raised by the petitioners against the seniority principles laid down in the Government Resolution of March 22, 1968 ought to have been rejected by the High Court on the ground of delay and laches and the writ petition insofar as it related to the prayer for quashing the said Government Resolution should have been dismissed.

8. We are in respectful agreement with the above observation.

9. We may also refer here to the weighty observations made by a Constitution Bench of this Court in *Malcom Lawrence Cecil D'Souza v. Union of India* at pp. 413-14 of the Reports which are as follows: (SCC p. 602, para 9)

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

Later, in *Union of India (UOI) and Another Vs. S.S. Kothiyal and Others*, , the Court, while interfering with exercise of discretion by the High Court, in a belated

claim for service benefits, held as follows:

In our opinion, the admitted facts of this case alone are sufficient to reverse the judgment of the learned Single Judge as well as that of the Division Bench of the High Court. According to the version of Respondent 1 himself, his representation against non-promotion as Deputy Commandant was rejected on 10-6-1971, the second such representation made on 19-8-1971 was rejected on 4-11-1974 and the third representation made on 12-4-1977 was rejected on 11-7-1977. It is obvious that on rejection of his representation in June 1971, there was no occasion for Respondent 1 to wait any longer to challenge his non-promotion and, Therefore, the filing of the writ petition 8 years thereafter in December 1978, was highly belated and deserved to be rejected on the ground of laches alone in view of the settled principles relating to interference in service matters of this kind in exercise of the power of judicial review. The learned Single Judge as well as the Division Bench of the High Court completely overlooked this aspect.

30. The tangle of facts notwithstanding, the justification given by the petitioner for approaching the court after a considerable delay was that he sought intervention of various authorities, including the Central Government, and the various Commissions, which had advised the STC to grant him justice. In *S.S. Rathore Vs. State of Madhya Pradesh*, the Supreme Court held that in service disputes, submission of repeated representations, not provided for under the Rules or statutory orders, cannot be used as an argument to justify maintainability of belated petitions.

31. The considerations of delay and laches apart, one singular feature which this Court has to bear in mind, is that the petitioner has claimed antedating of his promotions or appointments. In order to succeed, in such cases, the claimant has to show that his case was wrongly overlooked when it fell due. As noticed earlier, the posts of Marketing Manager, General Manager, and Director, were all filled through either direct recruitment, or selection. The petitioner is pitching his claim on the basis of his seniority in the initial grade of Deputy Marketing Manager-II. He has not denied that the posts of Marketing Manager and General Manager could be filled, at the relevant time on the basis of direct recruitment. The contesting respondents were appointed through the direct recruitment process, before the petitioner, in the concerned posts/ grades. The petitioner has not revealed how in the absence of a challenge to such recruitment process, he can nevertheless lay a claim for seniority and promotion. In the absence of a rule or guideline, such a claim for retrospective appointment cannot be acceded to.

32. For the foregoing reasons, the claims in this petition cannot be granted. The writ petition is accordingly dismissed; rule discharged. No costs.