(2010) 08 RAJ CK 0189

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4456 of 2006

Rajendra Kumar Dhaddha APPELLANT

Vs

Rajasthan Rajya Vidhyut Prasaran Nigam Ltd. and Others RESPONDENT

Date of Decision : 18-08-2010

Acts Referred:

Citation : (2010) 4 RLW 3781

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vineet Kothari, J.—The Petitioner a gold medalist topper of Diploma in Cost and Works Accountancy passed by him from Jodhpur University was appointed as Accountant/Sub-Divisional Accountant/Internal Auditor vide order dtd. 8.5.1979 by the Respondent- Rajasthan State Electricity Board now known as Jodhpur Vidhyut Vitran Nigam limited (for short RSEB/JNWNI). The said appointment was offered to the Petitioner as per the then prevailing Rules of the Respondents for offering the said direct appointment to the toppers and the first three rank holders for the said post. However, in terms and conditions in the said appointment order dtd. 8.5.1979, vide condition No. 2 it was stipulated that their final selection and inter se seniority shall depend and be determined on the basis of merit obtained in the examination. The condition No. 1 stipulated that the Petitioner and one Sh. M.M. Pareek who were so appointed (M.M. Pareek never joined duties) shall have to appear at the first direct recruitment examination to be held by the Board for Recruitment to the service in the cadre of Accountant/ Sub-Divisional Accountant/Internal Auditor after their appointment.

2. The Petitioner could not take up such examination which was conducted in the December, 1979 due to illness, but took the same in the month of December, 1980 and was declared successful in the month of January, 1981. Thereafter another office order was issued by the Respondent-RSEB on 3.4.1981 placing the Petitioner on probation for a period of two years consequent to his passing the

said examination on 5.1.1981.

3. The case of the Petitioner before this Court in the present writ petition is that the Petitioner was governed by the RSEB Service Regulations, 1964 vide condition No. 5 in the original appointment order itself dated 8.5.1979 and as per the said Regulations, for promotion to the next higher post of Assistant Accounts Officer/Assistant Audit Officer/Assistant Revenue Officer as per the relevant Rules (Annex. 19 page 83 of the writ petition), the Petitioner became entitled to be considered for the said promotion in the year 1984 after completion of 5 years of experience in the service from the date of his initial appointment dtd. 8.5.1979 and therefore, he was wrongly ignored for the said promotion in the year 1985 and another person, namely, Sh. O.P. Verma who, even though appointed earlier than the Petitioner as Accountant on 1.8.1974, but acquired the qualification of DCWA only on 14.6.1984, when he passed the said qualification and therefore, the Petitioner was wrongly so ignored for the said promotion and subsequent due promotions. However, the Petitioner contended before this Court that he is neither challenging the promotion of Sh. O.P. Verma nor he has impleaded him as party- Respondent in the present writ petition because said Sh. O.P. Verma has now already retired from the service on 31.8.2000. The Petitioner has filed this writ petition in the year 2006 because even though earlier office reports on the representations of the Petitioner were favourable to the Petitioner, but it is only vide communication Annex. 1 dtd. 16.1.2006 written by the Secretary (Admn.) of Rajasthan Rajya Vidhyut Prasaran Nigam Limited (for short Committee, Government of Rajasthan, Jaipur that the Respondents took a contrary stand on the representations made by the Petitioner and that is why upon this cause of auction to the Petitioner, the Petitioner has approached this Court and by that time, the said person Mr. O.P. Verma had already retired and since the Petitioner could not claim any relief against said Sh. O.P. Verma consequent to his retirement, he was not so impleaded.

4. That eligibility criteria for promotion to the post of Assistant Accounts Officer as given in Annex. 18 (Para 83) is reproduced as under:

OFFICERS (RECRUITMENT, PROMOTIONS & SENIORITY) REGULATION, 1964

Item No.

Post

Method Recruitment with % age

of

Qualification

Asstt Accounts Officer/Asstt. Audit Officer/Asstt. Revenue Officer

100% Selection

by

(1) 75% by promotion on merit basis from the Accountants with atleast7 years service as Accountant in Rajasthan State Electricity Board.

(2) 25% by promotion on merit basis out of Accountants possessing qualification/ experience as given below:

(a) An Intermediate of the Cost and Works from the Institute of Cost and Works, Calcutta with 5 years experience as Accountant in Rajasthan State Electricity Board.

Or

A Graduate holding diploma in Cost and Works from a University Established by law India with 5 years experience as an Accountant in Rajasthan State Electricity Board.

Note: In the event of non-availability, the vacancies may be filled in by the Accountants under No. (1) and (2) above and vice-versa.

5. Mr. R.S. Saluja, learned Counsel appearing for the Petitioner contended that requirement of experience of 5 years with eligibility qualification of Diploma in Cost and Works Accounts from a University was satisfied by the Petitioner in the year 1984 itself, since he was offered direct appointment being topper in the said course of DCWA and was so appointed on 8.5.1979 with said degree already in his hands, therefore, the experience with said degree of 5 years, irrespective of nature of appointment being adhoc, made him eligible for being considered for promotion to the next higher post of Assistant Accounts Officer in the year 1984 itself.

6. Mr. R.S. Saluja also contended that the condition of passing of examination by the Petitioner imposed in the initial appointment order dtd. 8.5.1979 was not making his appointment regular after passing the said examination, but the said examination in the form of screening test was merely with a view to decide whether the Petitioner could be continued in service or did not deserve to be retained in service and therefore, it cannot be said that the Petitioner became regular in service or was borne in the cadre of Accountant only after passing of said examination in the year 1981 when subsequent office order was issued by the Respondents on 3.4.1981 again placing him on probation for a period of two years. The experience of 5 years as per the said regulation quoted above makes no distinction in the nature of initial appointment or on the basis of passing of said examination in the nature of screening and therefore, the eligibility of the Petitioner for promotion to the next higher post in the year 1984 could not be disputed.

7. The learned Counsel for the Petitioner also urged that a perusal of order Annex. 12 dtd. 23.5.1974, Annex. 13 dtd. 5.10.1991 and Annex. 14 dtd. 25.1.1981 issued by the Respondent -RSEB would clearly show that the said condition of passing of examination/screening test was waived/relaxed by the Respondent itself for the cadre of LDC (Annex. 12), Accounts Officer (Annex. 13)

and Jr. Engineer (Annex. 14), therefore, the Respondents could not discriminate against the Petitioner and hold that the Petitioner could be treated in regular service only after passing of said examination w.e.f. 3.4.1981 vide Annex. 7.

8. In support of the contention that the period of service in the nature of adhoc appointment, has also to be computed while computing the experience period of 5 years in the relevant Rules for considering the eligibility for promotion to the next higher post, the learned Counsel for the Petitioner Mr. R.S. Saluja relied upon the decision of the Hon''ble Supreme Court in the cases of Indian Airlines Limited v. S. Gopalkrishnan reported in 2001(2) SCC 362 :RJW 2001(1) SC 149 , Kailash Chandra Rajawat Vs. Union of India and another, Smt. Renu Mullick Vs. Union of India and another, and Baleshwar Dass and Others Vs. State of Uttar Pradesh and Others,

9. In the case of Indian Air Lines Limited v. Gopalkrishnan (supra) in Para 5 the Hon''ble Supreme Court has observed as under:

(5) WHEN in addition to qualification, experience is prescribed , it would only mean acquiring experience after obtaining the necessary qualification and not before obtaining such qualification. In the case of the Respondent he obtained the ITI certificate in the year 1994 and, therefore, did not possess five years of experience as required under the relevant rule. If his qualification as a diploma holder in Mechanical Engineering is taken note of, he has not completed three years of experience as he got the same in April, 1996 and on relevant date he did not possess such qualification. Indeed in prescribing qualification and experience, it is also made clear in the general instruction at Item No. 6 that "experience will be computed after the date of acquiring the necessary qualifications." Therefore, when this requirement was made very clear that he should have experience only after acquiring the qualification the view taken by the High Court to the contrary either by the learned Single Judge or thee Division Bench dos not stand to reason.

10. In the case of Kailash Chandra Rajawat v. Union of India and Ors. (supra), the Hon''ble Supreme Court has observed as under:

5.... We are further of the view that the case before us is directly covered by the ratio in Baleshwar Dass and Others Vs. State of Uttar Pradesh and Others, Thus, the reason for dismissal of the Appellant''s application by the Tribunal is not sustainable. The period spent by the Appellant, as temporary duty, prior to his regularisation was required to be taken into consideration for considering his eligibility for promotion and when so taken, it is apparent that the Appellant possessed the requisite experience as a Trains Clerk for his eligibility to promotion as Goods Guard "C".

11. In the case of Renu Mullick v. Union of India (supra), the Hon''ble Supreme Court has observed as under:

11. The provisions of the Rules reproduced above lay down that a UDC with 5

years'' service or UDC with 13 years of total service as UDC and LDC taken together subject to the condition that he should have put in a minimum of 2 years of service in the grade of UDC, is eligible to be considered for promotion to the post of Inspector. The Rule nowhere lays down that 5 years or 13 years have to be spent in one collectorate. There is no indication, whatsoever, in the Rule that the service period of 5 years and 13 years is not applicable to an officer who has been transferred from one collectorate to another on his own request. On the plain language of the Rule the Appellant, having served the department for more than 5 years as UDC and also having completed 13 years as UDC and LDC including 2 years minimum service as UDC was eligible to be considered for promotion to the post of Inspector. The Tribunal failed to appreciate the elementary rules of interpretation and fell into patent error in non-suiting the Appellant.

12. In the case of Baleshwar Dass v. State of U.P. (supra), the Hon''ble Justice Krishna Iyer J. speaking for the Bench of Hon''ble Supreme Court prefaced the landmark judgment in the following terms in para No. 1:

1. This case illustrates the thesis that unlimited jurisdiction under Article 136 self-defeatingly attracts unlimited litigation which, in turn, clogs up and slows down to zero speed the flow of ultimate decisions, what with the lengthy morality and legal nicety of advocacy. This bunch of appeals, affecting the fortunes of a large number of engineer, is evidence of the flood of ''service'' litigation which (sic! burdens) the Courts, paralyses public offices and demands of our pyramidal Justice System basic changes, jurisdictional and processual. The perennial problems of Service Justice, which currently crowd the dockets of the higher courts, save in cases of basis breaches of the fundamental law, may well be made over to expert bodies, high powered and final but presided over by top judicial personnel. Service Jurisprudence is a specialized breach best administered by special tribunals, not routinely under Article 226. We do not pontificate but share thoughts." The Hon''ble Justice Krishna Iyer J. continued in para 20 to focus on the controversy in hand about temporary or adhoc employees in the following terms:

20. There is more of this maze of rules and notifications but we desist from bringing them on record since they have not much hearing on the ultimate result. We must emphasise that while temporary and permanent posts have great relevancy in regard to the career of government servants, keeping posts temporary for long, some times by annual renewals for several years, and denying the claims of the incumbents on the score that their posts are temporary makes no sense and strikes us as arbitrary especially when both temporary and permanent appointees are functionally identified. If, in the normal course, a post is temporary in the real sense and the appointee knows that his tenure cannot exceed the post in longevity, there cannot be anything unfair or capricious in clothing him, with no rights. Not so, if the post is for certain departmental or like purposes, declared temporary, but it is within the ken of both the government

and the appointee that the temporary posts are virtually long-lived. It is irrational to reject the claim of the ''temporary'' appointee on the nominal score of the terminology of the post. We must also express emphatically that the principle which has received the sanction of this Court''s pronouncements is that officiating service in a post is for all practical purposes of seniority as good as service on a regular basis. It may be permissible, within limits, for government to ignore officiating service and count only regular service when claims of seniority come before it, provided the rules in that regard are clear and categorise and do not admit of any ambiguity and cruelly arbitrary cut-off of long years of service does not take place or there is functionally and qualitatively, substantial difference in the service rendered in the two types of posts. While rules regulating conditions of service are within the executive power of the State or its legislative power under Proviso to Art 309, even so, such rules have to be reasonable, fair and not grossly unjust if they are to survive the test of Arts. 14 and 16.

21. While assessing thee effect of the totality of the two sets of rules placed before us we have to make the broad approach set out above and not become prisoners of the ''official'' meaning of abstruse expressions used in the rules which themselves have frequently changed with a view to "rationalisation."

22. Right in the beginning we have indicated that R. 23 is of spinal significance, and for purposes of seniority one has to go by the order of appointment to the Service in a substantive capacity. It is difficult to overlook R. 23 or slur over the expression substantive capacity. But we cannot attribute fixed connotations to expressions like ''substantive capacity'', ''service'', ''cadre'' and the like because we find that probation even for temporary appointees is provided for in the rules which means that even temporary appointments can be substantive.

23 . ...It is also fairly apparent from the arguments, although not formally conceded by counsel, that officiation, from the date from which temporarily appointed Assistant Engineers have been formally approved by the Public Service Commission on reference by the State Government, must be given credit or at least from the date of Government''s acceptance of the Commission''s recommendation. There was nothing more by way of impediment in their appointments being treated as regular. They were Assistant Engineers duly qualified. Their appointments might have been temporary, but temporary posts and temporary appointments are within the Rules. The Public Service Commission has since been consulted and has concurred and Government has accepted it. Every indicium of regular appointment is thus present. There is nothing relied on by the rivals to dislodge the reckoning of service for purposes of seniority from then on, except the sole contention that the temporary Assistant Engineers are not members of the Service because their appointment is not in a substantive capacity and not to a permanent post.

Deprecating the inglorious concept of ''confirmation'', the Court proceeded to criticise the same in following terms in para No. 30:

30. ...Confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. A glaring instance widely known in a part of our country is of a distinguished member of the judiciary who was confirmed as District Judge years after he was confirmed as a Judge of the High" Court. It is on the record of these writ petitions that officiating Deputy Engineers were not confirmed even though substantive vacancies were available in which they could have been confirmed. It shows that confirmation does not have to conform to any set rules and whether an employee should be confirmed or not depends on the sweet will and pleasure of the government.

Concluding the debate and holding in favour of adhoc and temporary Engineer, the Apex Court summed up like thus:

33. Once we understand "substantive capacity'' in the above sense, we may be able to rationalise the situation. If the appointment is to a post and the capacity in which the appointment is made is of indefinite duration, if the Public Service Commission has been consulted and has approved, if the tests prescribed have been taken and passed, if probation has been prescribed and has been approved, one may well say that the post was held by the incumbent in a substantial capacity.

36. The normal rule consistent with equity is that officiating service, even before confirmation in service has relevancy to seniority if eventually no infirmities in the way of confirmation exists. We see nothing in the scheme of the Rules contrary to that principle. Therefore, the point from which service has to be counted is the commencement of the officiating service of the Assistant Engineers who might not have secured permanent appointments in the beginning and in that sense may still be temporary, but who, for all other purposes, have been regularised and are fit to be absorbed into permanent posts as and when they are vacant.

The aforesaid ratio clearly supports the case of the present Petitioner before this Court.

13. The learned Counsel for the Petitioner drew the attention of the Court towards the office notings of the Respondent-Board Annex. 31 on record specially para 50 to 53, which are reproduced hereunder:

(50) The last line of the relevant provision provides that the final selection and seniority interse of person was so appointed shall depend and be determined on the basis of merit obtained in the examination. From it, it may be connoted that the final selection i.e. his appointment is to be continued for future or his services are to be terminated will depend upon his passing the examination. The seniority inter-se itself defines that the seniority between these two persons (Sh. R.K. Dhaddha and Shri M.M. Pareek) is to be determined on the basis of merit obtained in the examination and not the seniority in between the existing candidates and these two candidates.

51. In view of the above, the appointment of Shri R.K. Dhaddha is likely to be considered from the date of his first joining in the service in the cadre of Acctt. i.e. 9.5.1979 for all purposes.

52. The case is, therefore, submitted for kind perusal and orders as to whether the date of appointment for all purposes in respect of Shri Dhaddha be taken as 9.5.1979 on which he joined first in Board''s service or from 5.1.81 on which he was declared successful in the examination.

Sd/- (B.K. Agarwal) 23.4.97 DS (F & R)

53. I agree with the views expressed at 50 and 51/N and accordingly the date of appointment should be considered for all purposes, on which Shri Dhaddha joined first in the Board on 9.5.79.

Sd/- DS (F & R) 24.4.97 FA & COA Sd/- (Y.S. Naurawat) F.A. & C.O.A. 26.4.97 A.O. (Estt.) Sd/- (M.L Sharma) 1.5.97

14. The learned Counsel for the Petitioner submitted that in the year 1997, the nothings showed that the question relating to the assignment of seniority and considering the eligibility of the Petitioner for promotion to the next higher post of Assistant Accounts Officers was being favourably considered. However, later on for the reasons best known to the Respondents, there was change in their stand in the year 2006 vide communication Annex. 1 dtd. 16.1.2006 and that why the Petitioner had to approach this Court and therefore, the writ petition cannot be said to be belated or filed with delay and laches on the part of the Petitioner who had been constantly making representations to the Respondents seeking his seniority and eligibility for promotion from the date of initial appointment 9.5.1979 for all through, but however, no adverse communication was given to the Petitioner at any point of time prior to this except vide Annex. 16 dtd. 24.4.1998 against which the Petitioner filed an appeal before the Member, (Finance and Accounts) vide Annex. 17 dtd. 10.7.1998. The learned Counsel for the Petitioner therefore, prayed appropriate directions to the Respondent- Board to accord the seniority to the Petitioner from the date of initial appointment in the cadre of Accountant w.e.f. 9.5.1979 and also to consider the Petitioner as eligible for promotion in pursuance of aforesaid quoted rules in the year 1984 and grant him that promotion and subsequent promotions by creating supernumerary post, if necessary with all consequential benefits.

15. Per contra, Mr. Kuldeep Mathur, learned Counsel for the Respondents vehemently submitted as under:

(i) The present writ petition is grossly belated and therefore, deserves to be dismissed. The learned Counsel submitted that the condition of initial appointment requiring the Petitioner to undergo the examination was never challenged by the Petitioner and the same cannot be challenged at this stage after so many years and secondly the representation of the Petitioner also stood rejected vide Annex. 16 dtd. 24.4.1998 and even after that the Petitioner has approached this Court in the year 2006 by way of present writ petition and the same, therefore, deserves to be dismissed. He relied upon the decision of the Hon''ble Supreme Court in this regard in the case of Union of India (UOI) and Others Vs. M.K. Sarkar,

(ii) Mr. Kuldeep Mathur learned Counsel for the Respondents also submitted that without challenging the promotion of Mr. O.P. Verma and without impleading him, the present writ petition filed by the Petitioner is not maintainable because the said Mr. O.P. Verma who was promoted as AAO on 26.6.1985 upon acquiring the experience of 5 years and later on acquiring the qualification of DCWA on 14.6.1984 was rightly so promoted as AAO since the Petitioner''s services were regularized only on 3.4.1981 and therefore, the Petitioner''s eligibility of 5 years experience with DCWA would be computed only from 3.4.1981 and thus the Petitioner was not eligible in the year 1985. However, without challenging the promotion of Mr. O.P. Verma which has not been done by the present Petitioner, the writ petition filed by the Petitioner, therefore, deserves to be dismissed.

(iii) The learned Counsel for the Respondents further submitted that the Petitioner was appointed on the higher post of Accounts Officer upon passing the direct recruitment examination of the Respondent -Department on 11.9.1997 and thereafter further promotion to the post of Sr. A.A.O. w.e.f. 5.6.2009. At this stage, the Petitioner claim his notional promotion from the cadre of Accountant to the post of AAO from the year 1985. Relying upon the following decisions, the learned Counsel for the Respondents submitted that the present writ petition, therefore, deserves to be dismissed:

(a) P.S. Gopinathan Vs. State of Kerala and Others,

(b) K.R. Mudgal and Others Vs. R.P. Singh and Others,

(c) B.S. Bajwa and Another Vs. State of Punjab and Others,

16. I have heard the learned Counsels for the parties at length and perused the record of the case and the judgments cited at the Bar and given my thoughtful consideration to the relevant submissions made at the bar.

17. In the consideration opinion of this Court, the writ petition filed by the Petitioner deserves to be allowed. The reasons are as follows.

18. The Petitioner was offered appointment being topper in DCWA course of the Jodhpur University. As per the relevant Rules applicable to the Respondent RSEB at that time to offer appointment on the post of Accountant to the first three rank holders and accordingly, the Petitioner along with one Mr. M.M. Pareek were so appointed vide Annex. 4 dtd. 8.5.1979. Mr. M.M. Pareek did not choose to join, but the Petitioner joined as Accountant in pursuance of said offer of appointment. The condition of passing of examination as stipulated in the appointment order dtd. 8.5.1979 was merely to screen the Petitioner''s suitability for either being retained in service or being terminated. Neither appointment order dtd. 8.5.1979 nor any other Rules or Regulations of 1964 applicable to the

Petitioner as stipulated in condition No. 5 of the appointment order dtd. 8.5.1979 made the regularization of the Petitioner''s services dependent upon the date when he passes the said examination. Admittedly, the Petitioner did not appear in the said examination held after his appointment on 8.5.1979 in the month of December, 1979 for medical reasons still the Respondent-RSEB waited for one full year and again in the month of December, 1980 when such examination was held and the Petitioner cleared the same, the Respondent - RSEB decided to retain the services of the Petitioner by passing another order Annex. 7 dtd. 3.4.1981. The eligibility criteria for promotion to the next higher post of AAO as given in Annex. 18 page 83 quoted above does not talk of any such regularization or completion of probation period or ad hoc services for computing the experience of 5 years as Accountant. There is no dispute from the side of the Respondents that the Petitioner was working uninterruptedly and continuously as Accountant right from the day one i.e. 9.5.1979. His experience in work as Accountant could not and did not depend upon his passing of examination, therefore, as far as experience of 5 years is concerned, undisputedly, the Petitioner acquired that experience in the year 1984 computing 5 years'' period from the date of initial appointment i.e. 9.5.1979. As far as qualification is concerned, the Petitioner had that qualification from day one and was offered this appointment as per the Rules having acquired gold medal in the said course. Therefore, the twin conditions in eligibility criteria prescribed in Annex. 18 were admittedly satisfied by the Petitioner in the year 1984 itself.

19. That undisputed facts regarding other contender Mr. O.P. Verma are that he was appointed in service prior to the Petitioner namely on 1.8.1974, but he acquired the qualification of DCWA only on 14.6.1984. If the eligibility criteria quoted above in Annex. 18 was to be read as ''experience and qualification'', then Mr. O.P. Verma obviously did not have this post qualification experience of 5 years as Accountant. This is the position as per ratio of Hon''ble Supreme Court''s decision in the case of Indian Airlines v. S. Gopalkrishnan (supra). However, no such distinction is either envisaged in the Rules nor is required to be made in the present case and therefore, the Petitioner has rightly not challenged the promotion of Mr. O.P. Verma and has rightly not impleaded him as party Respondent in the present case as he has already retired in the year 2000, but at the time, the Petitioner''s challenge to his being wrongly not considered for said promotion in the year 1984 or 1985 when Mr. O.P. Verma was promoted, is a challenge which in the opinion of this Court deserves to succeed.

20. As held by the Hon''ble Supreme Court in the case of Indian Airlines Limited (supra) in para 5 quoted above, if one was to consider the candidature of Mr. O.P. Verma strictly in accordance with aforesaid para 5, he would not be eligible for promotion in the year 1985 because the Hon''ble Supreme Court has held that whenever the qualification and experience both are prescribed, it would only mean the acquiring experience only after obtaining the necessary qualification and not before obtaining such qualification. By the same analogy, the Petitioner who undertook the service with the qualification of DCWA on 9.5.1979 would be

so eligible for promotion in the year 1985 having acquired 5 years experience post qualification. However, as already observed, since the Petitioner has neither challenged the promotion of Mr. O.P. Verma nor has impleaded him, this Court has no occasion to hold that Mr. O.P. Verma was wrongly promoted as AAO on 26.6.1985. However, at the same time, there appears to be no valid justification for ignoring the case of the Petitioner for promotion in the year 1984-85. The reasons assigned in Annex. 1 communication dtd. 16.1.2006 that the seniority of the Petitioner in the cadre of Accountant should be reckoned from the date of passing of examination w.e.f. 5.1.1981 and not from the year 1979 is unsustainable. As already stated above, the said examination in the form of screening test was merely for the purpose of deciding as to whether the Petitioner could be retained in service or not. Once having cleared the examination and retained in service, the period rendered by the Petitioner as Accountant right from the day one 9.5.1979 was required to be computed as period of experience while considering the case for promotion to the next higher post of AAO and, therefore, in the opinion of this Court, in view of the ratio of judgments, relied upon by the learned Counsel for the Petitioner and quoted above, the Petitioner''s case was wrongly ignored for promotion in the year 1985. The Petitioner is, therefore, entitled to consequential notional promotions flowing from such non-consideration by the Respondents.

21. In fact, the Respondents themselves were clear about this position of law vide para 50 of the office note quoted above, which was signed by the different senior and responsible officers of the Respondent- RSEB including the Dy. Secretary (F & R) and other authorities. Without any reasonable basis and without controverting the said reasoning in para 50, it appears that the Respondents issued the adverse communication Annex. 1 dtd. 16.1.2006 compelling the Petitioner to file the present writ petition. Earlier rejection of representation vide Annex. 16 dtd. 24.4.1998 against which the Petitioner filed an appeal which was never decided, does not render the present writ petition time barred or suffer from any delay and laches. On the contrary, the Petitioner has been constantly making representations and pursuing for his right and contending before the Respondents that he deserves to be accorded the seniority and consequential promotion considering his initial date of appointment as starting point for computing the experience of 5 years as far as promotion to the next higher post of AAO was concerned. It is the Respondents who have kept on changing their stand, earlier favourable to the Petitioner and later on against the Petitioner and in these circumstances the writ Petitioner filed by the Petitioner also cannot be said to be suffering from any delay and laches.

22. The following case laws relied upon by the learned Counsel for the Respondents are, therefore, not applicable to the facts of the present case.

In the case of P.S. Gopinathan (supra) the Hon''ble Supreme Court held that the Appellant could be deemed to have acquiesced in the matter if he challenged the erroneous or unjustified terms in his appointment/promotion order after a long lapse of time. In the said case, the Appellant, a judicial officer, was appointed as Dist. and Sessions Judge vide order dtd. 14.1.1992 and such condition was challenged by the said Appellant in the year 2005 and the writ petition came to be dismissed by the High Court which judgment was affirmed by the Supreme Court. The said judgment, with respects is not applicable in the facts and circumstances of the present case, since the Petitioner is not challenging any terms of his appointment in the present writ petition.

In the case of Union of India v. M.K. Sarkar, (supra) the Hon''ble Supreme Court held that issue of limitation or delay and laches has to be considered with relation to original cause of action and not with relation to the date on which the order is passed in compliance with the Court''s direction. This judgment is also of no avail to the learned Counsel for the Respondents, as the Petitioner in the present case has filed the present writ petition in the year 2006 itself soon after Annex. 1 communication of 2006 was issued against the Petitioner, contrary to the earlier favourable consideration of the representations of the Petitioner by the Respondent - RSEB itself. The order Annex. 1 was not passed in pursuance of any Court''s direction, therefore, the said decision relied upon by the learned Counsel for the Respondents is also not applicable to the facts of the present case.

In the case of K.R. Mudgal v. R.P. Singh (supra) relied upon by the learned Counsel for the Respondents, the challenge to the seniority list questioning some appointment made nearly 22 years ago was negatived. There is no such thing in the present case and therefore, this decision is also of no avail to the Respondents.

In the case of B.S. Bajwa v. State of Punjab (supra), similarly seniority dispute raised after more than a decade after joining service when in the meantime promotions had also taken place, was not entertained by the High Court and the said judgment was upheld by the Hon''ble Supreme Court. This judgment is also not applicable because the Petitioner is not challenging any promotion made by the Respondents.

23. Consequently, this writ petition is allowed with costs of Rs. 5000/- and the Petitioner is held entitled to be assigned seniority in the cadre of Accountant from the date of his initial appointment i.e. 9.5.1979 and is further held entitled and eligible to be considered for promotion in terms of qualification and experience for promotion to the next highest post of AAO in the year 1984-85 and he deserves to be granted all consequential benefits as AAO with effect from the date when the person so actually promoted Mr. O.P. Verma was given such promotion w.e.f. 26.6.1985 if necessary by creating supernumerary post for that purpose for accommodating the Petitioner. The Petitioner will be entitled to all consequential monetary benefits flowing from the same including further notional promotions and arrears etc.

