

(2023) 04 CAT CK 0064

In the Central Administrative Tribunal

Case No : Original Application No. 272, 207, 211, 212 Of 2021, 344 Of 2022

Rakesh Kumar Patel & Ors

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 27-04-2023

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Central Civil Services (Classification Control And Appeal) Rules, 1965 — Rule 1
Constitution Of India, 1950 — Article 310(1), 311, 311(2)

Citation : (2023) 04 CAT CK 0064

Hon'ble Judges : Om Prakash VII, Member (J); Dr. Sanjiv Kumar, Member (A)

Bench : Division Bench

Advocate : Shyamal Narain, Pradeep Chandra, Narendra Kumar Srivastava, Dharmendra Tiwari, Jaswant Singh, Siddharth Khare, Rakesh Kumar Shukla, Shashi Prakash Singh, Saumitra Singh, Chakrapani Vatsyayan, Manoj Kumar Sharma, Ashish Srivastava, Kripa Shankar, Abhishek Ritabh Shukla

Final Decision : Allowed

Judgement

Dr. Sanjiv Kumar, Member (A)

1. As the subject matter in all the connected O.As are one and the same and the relief/s sought by the applicants are similar, merely having different dates would not in any way disturb the ultimate finding to be given by this Tribunal. Therefore, as requested by the counsel for either sides, all the O.As have been heard together and decided by a common order. For ready reference the facts of the O.A No. 272/2021 are taken.

2. The instant OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking relief to:-

(a) quash and set aside the impugned Establishment Order Nos. I/A/CCSC/11/2021 and I/A/CCSC/12/2021, both dated 19.02.2021, demoting/reverting/reassigning the applicants and other similarly situated Inspectors.

(b) such other relief, as the applicants might be found entitled to in the facts and circumstances of the case and;

(c) award the costs of this Original Application in favour of the applicants.

3. The facts of the case of the applicants are that all the applicants are promotee Inspectors who had joined the respondents' department as Stenographers/Lower/Upper Division Clerks/Data Entry Operator, and then risen through the ranks, by way of promotions, to become Inspectors against regular vacancies belonging to different vacancy years through DPCs/review DPCs conducted by the respondents from time to time. They were substantively promoted to the post of Inspector a long time back, against regular vacancies belonging to different vacancy years and their promotions were on a regular basis, subject, in some cases, only to the outcome of certain SLPs stated to be pending before the Hon'ble Supreme Court. All the applicants have been enjoying the seniority, right since the time of their promotion as Inspectors along with all consequential benefits flowing from such promotion.

4. The applicants further aver that all of a sudden, and totally out of the blue, the respondents have gone ahead and issued the impugned Establishment Order No. I/A/CCSC/11/2021, dated 19.02.2021 whereby, on the ostensible recommendation of a review DPC, convened in compliance of CBEC/CBIC directions, held on 19.02.2021 for the vacancy years 2002 -03, till 2016, and its approval by the competent authority, the applicants, amongst hundreds of others, who had long back been promoted substantively to the post of Inspector, by different DPCs/review DPCs held from 13.12.2002 till 22.11.2017, against different vacancy years mentioned in their respective orders of promotion, have suddenly been demoted/reverted/ reassigned to the original position/lower grade/post held by them at the time of their promotion and respondents went ahead and passed two more orders on 19.02.2021, being Establishment Order No. I/A/CCSC /12/2021, and Establishment Order No. I/A/ CCSC/13/2021. While by means of first Establishment Order No. I/A/CCSC/12/2021, dated 19.02.2021 the respondents, after first demoting/reverting Inspectors vide the impugned Establishment Order No. I/A/CCSC/11/2021, dated 19.02.2021, have drastically changed and brought forward the dates of notional promotion of the Inspectors to the serious detriment of their seniority positions, and also left out several of the demoted Inspectors from the new promotion list. By means of the third Establishment Order No. I/A/CCSC/13/2021, dated 19.02.2021, as many as 106 Inspectors, after first being demoted/reverted to their pre -promotional posts/grades, have been sought to be granted promotion to the grade of Inspectors, on ad-hoc basis, against regular vacancy of direct recruit quota, with the unusual, and wholly incomprehensible, remark that such officers "will not form part of the regular strength of Inspectors and will be shown separately and they will not be entitled to seniority in the grade of Inspector". Thus, by means of the impugned Establishment Order Nos. I/A/CCSC/11/2021, and I/A/CCSC/12/2021, both dated 19.02.2021, the applicants, in one fell stroke, have first been suddenly

divested of their regular promotion to the post of Inspector, and demoted to the position held by them several years ago, that too without even being informed of any reason, let alone called upon to show -cause against the drastic action taken against them, and then, sought to be promoted again but w.e.f. the dates long after the date of their promotion/notional promotion as Inspectors.

5. The applicants assert that the impugned action of the respondents in seeking to revert/demote the applicants is also in the teeth of the explicit provisions of Article 311 (2) of the Constitution. In this view of the matter, the impugned order is not just wholly unconstitutional, but also penal in nature and fraught with serious and damaging civil consequences.

6. They further say that it is well settled law that once a promotion order granting regular, substantive promotion against a regular vacancy has crystallized into an incumbent being actually promoted, no order of reversion or demotion from the promotional post can be passed, even if the promotion in question had wrongly been given, without giving the incumbent a proper notice and an adequate and reasonable opportunity of hearing. The only exception to this cardinal rule of meticulous observance of the principles of natural justice would be in a case where the promotion is alleged to have been obtained by way of misrepresentation or fraud. Since that is not the case here, the impugned order of demotion/reversion passed by the respondents, that too several years after the promotions were made, and in gross violation of the principles of natural justice, cannot be countenanced, or sustained.

7. The applicants further state that being unceremoniously demoted by the impugned order and then promoted again but only w.e.f. a much later date (and some not even so promoted), the applicants are looking at a bleak present and a financially and vocationally devastated future. Hence, the need, necessity and pressing urgency for quashing the impugned orders, and restoring the status quo-anti as on 18.02.2020 in respect of all incumbents covered by the said orders.

8. Based on following grounds the applicants seek the above mentioned relief:-

A. Because by means of the impugned Establishment Order No. I/A/CCSC/11/2021, dated 19.02.2021, the applicants, in one fell stroke, have suddenly been divested, nay robbed, of their regular promotion to the post of Inspector, and demoted to the position held by them several years ago, that too without even being informed, let alone called upon to show-cause against the drastic action taken against them.

B. Because the impugned Establishment Order No. I/A/CCSC/11/2021, dated 19.02.2021, is conspicuously, and mysteriously, silent as to the reasons for this wholly arbitrary, whimsical and unreasonable action taken by the respondents against the hapless applicants. A bare reading of the said order fails to disclose any ground, or reason, for the demotions/reversions in question which the applicants have so abruptly and rudely been subjected to.

C. Because it is well settled in law that once a promotion order granting regular, substantive promotion against a regular vacancy has crystallized into an incumbent being actually promoted, no order of reversion or demotion from the promotional post can be passed, even if the promotion in question had wrongly been given, without giving the incumbent a proper notice and an adequate and reasonable opportunity of hearing.

D. Because the only exception to this cardinal rule of meticulous observance of the principles of natural justice would be in a case where the promotion is alleged to have been obtained by way of misrepresentation or fraud, but since that is not the case here, the impugned order of demotion/reversion passed by the respondents, that too several years after the promotions were made, and in gross violation of the principles of natural justice, cannot be countenanced, or sustained, and is, therefore, liable to be quashed forthwith with exemplary costs.

E. Because the impugned action of the respondents in seeking to revert/demote the applicants is also in the teeth of the explicit provisions of Article 311 (2) of the Constitution, which is not just in the nature of an exception to the pleasure doctrine contained in Article 310 (1), but gives a constitutional mandate to the *audi alteram partem* rule of natural justice.

F. Because the impugned order is not just wholly unconstitutional, but also penal in nature and fraught with serious and damaging civil consequences. Hence, liable to be interfered with immediately.

G. Because given the very nature of the O.A. No. 3996/2018, the order it is directed against and the relief prayed for therein, it is crystal clear that the applicants in that O.A. are not seeking any personal relief, peculiar to them, nor are agitating any individual grievance, but, instead, the *lis* involved in the O.A. concerns, and relates to, a whole class of identically situated persons whose promotions as Inspectors given long back had come under a cloud due to the order dated 24.10.2016 which was aimed at an entire class of promotees, and not just a few isolated individuals; as such, the interim order of status quo passed in the said O.A. cannot validly be interpreted narrowly to mean that it was directing status quo only qua the status of the few applicants before it, but, instead, the status quo directed to be maintained by the said order has to be interpreted as being in reference to the order impugned before it, and the action contemplated under that order. Any other interpretation, would not just be illogical and illegal, but result in invidious discrimination and militate against the Constitutional guarantees of equality before law to all citizens.

H. Because the interim order (status quo) passed by the Principal Bench, whose benefit has been given by the respondents only to the applicants before it, says, "...Till then, there shall be status quo"; as such, the same is, general in nature, and an order in rem and cannot validly be interpreted as limiting the interim relief only to the applicants before it. The respondents, in all propriety, ought to have treated it as an order in rem, and extended its benefit across the board to

all similarly situated persons, instead of confining it to just a few, and in failing to do so, they have fallen foul of a catena of judicial decisions on the subject.

I. Because it is highly irregular on the part of the respondents to unilaterally reopen long settled events in the service life of incumbents by resorting to review DPCs of promotions dating back to two decades, thereby creating a climate of utter chaos, uncertainty and unpredictability.

J. Because the orders impugned are calculated to wreak havoc with, and unsettle, long-standing seniority of the applicants; as such, they are clearly in violation of the oft - repeated dictum of the Hon^{ble} Apex Court, followed and reiterated countless times by various High Courts, that long settled seniority ought not to be unsettled or reopened after a long lapse of time.

K. Because the justification sought to be given by the respondents in defence of the impugned orders, namely, that the same were passed in pursuance of a CBEC order dated 24.10.2016, which itself was issued in compliance of a C.A.T Mumbai Bench judgment dated 06.06.2007 that was upheld by the Bombay High Court vide judgment dated 28.10.2013, passed in writ petition No. 298 of 2013, is factually incorrect and legally erroneous in as much as firstly, the C.A.T Mumbai Bench judgment would not bind the present set of applicants since they were not parties to the same; secondly, the applicants before the Mumbai Bench cannot be compared with the present applicants for the reason that while the applicants before Mumbai Bench were not duly promoted inspectors, but only claimants to such promotion, the present applicants had been regularly promoted long back to the grade of Inspectors and, therefore, could not validly be divested of their valuable accrued and vested right to the post of Inspector except in accordance with law and the principles of natural justice and, last, but not the least, there is no judgment of the Bombay High Court in existence upholding the C.A.T. Mumbai Bench judgment since the writ petition in question had been disposed of as withdrawn by the Bombay High Court, at the request of the Department itself, without any adjudication on merits.

L. Because, in any case, it is not open, or legally permissible, for the respondents to justify a non-speaking and unreasoned order, passed unilaterally and in violation of the principles of natural justice, depriving the applicants of their valuable accrued and vested right to the post of Inspector, by supplying reasons, or supplementing the orders impugned, by means of affidavit in the course of proceedings instituted for challenging the said orders.

M. Because after being unceremoniously demoted as above and then promoted again vide the impugned orders, but only w.e.f. a much later date (and some not even so promoted), the applicants are looking at a bleak present and a financially and vocationally devastated future.

N. Because the impugned orders have been passed arbitrarily, whimsically, unreasonably and in gross violation of the principles of equity, fair-play and natural justice.

9. Respondents have filed their counter affidavit and described the circumstances leading the review DPC dated 19.02.2021 and 24.03.2022 and subsequent establishment order dated 19.02.2021 and 22.04.2022 in following manner:-

1. That, consequent to cadre restructuring order dated 19.07.2001 of Government of India followed by Central Board of Excise and Customs (CBEC), now Central Board of Indirect Taxes (CBIC), instruction dated 05.06.2002, sanctioned strength of 1525 in Inspector grade in the combined cadre zone of Lucknow and Meerut falling under the Jurisdiction of Cadre Controlling Authority, Lucknow (or CCA Lucknow) was reduced to 1161. Meanwhile, from 19.07.2001 to 05.06.2002 no promotions in Inspector grade were made as the actual Sanctioned Strength was not available. Thereafter, in no way, the sanctioned strength of 1161 should have been breached after CBEC instruction dated 05.06.2002.

2. That, on 13.12.2002, the CCA Lucknow calculated 98 Vacancies as vacant since the Sanctioned Strength and Working Strength were 1161 and 1063 respectively. On 13.12.2002 CCA Lucknow conducted DPC for 98 vacancies where 92 promotions were made (6 vacancies were reserved for ST where candidates were not available). The maximum sanctioned strength was achieved. Promotions were rightly made till the year 2007 taking 1161 as Sanctioned Strength.

3. That, in CCA Lucknow, 382 posts of Inspector were upgraded to the post of Superintendent, Whether these posts are abolished or available for vacancy attracted a lot of controversy.

4. That, meanwhile, the issue of applicability of Recruitment Rules of 2002 of Inspector was raised in Central Excise Andhra Zone. The Andhra High Court ordered in 2005 that the pre-cadre vacancies i.e., vacancies available before restructuring in 2001 are to be filled by old Recruitment Rules 1979 of Inspector.

5. That, issues regarding the manner of calculation of vacancies and any availability/non-availability of upgraded vacancies for promotion from lower grade were not dealt by Andhra High Court, and nowhere the Court directed to fill upgraded/abolished vacancies. However, due to misinterpretation of Andhra High Court order, it was inferred that the upgraded 382 vacancies of Inspectors were available for filling up by promotion from lower grade. This resulted in breach of Sanctioned Strength and excess promotions were wrongly made in the years 2007, 2011 and 2012 by way of review DPCs.

6. That, almost same scenario existed in Cadre Control Zone Mumbai and litigations arose there as well. In one of such litigation, the Central Administrative Tribunal Bench Mumbai vide order dated 06.06.2007 (Annexure No. CA-10, Page No. 96) held that upgraded posts (449 in Mumbai Zone) are abolished posts (i.e. non-est) and the department was right in not filling up these posts by promotion from lower grade. Again, Hon'ble Tribunal Mumbai vide order dated 16.12.2010 (Annexure No. CA-11, Page No. 123) (corrected by order

dated 18.07.2012 in Review Petition No. 3/2011 in O.A. No. 510/2007) , quashed all promotional orders which were made taking upgraded posts as vacancies. These findings of the Hon?ble Central Administrative Tribunal Bench Mumbai were not interfered by Hon?ble High Court of Bombay in orders dated 28.10.2013 (Annexure no. CA-12, Page No. 124-126) and 16.01.2014 (Annexure No. CA-13, Page No. 127-128) in Writ Petition No. 298 of 2013.

7. That, the CBEC, however, afterwards re-assessed the whole scenario, took a final view in the matter that these upgraded posts were abolished posts and ordered for review of all DPCs conducted from 06.12.2002 onwards vide letter dated 24.10.2016, further clarified vide letter dated 27.08.2018, 04.09.2018, 06.09.2018 and 12.09.2018 (Annexure No. CA-1, 2, 3, 4 and 5 Page No. 34 to 75).

8. That, further, Hon?ble Central Administrative Tribunal, Principal Bench, New Delhi in the matter of Saulesh Kumar has held that corrective action on 382 upgraded posts be taken by the department and stayed DPCs in the grade of Superintendent. This Hon?ble Tribunal also in the matter of Anuj Gupta and Azim Ahmed vide interim order dated 05.07.2018 (Annexure no. CA-9) in Original Application No. 1490 of 2017 and Original Application No. 449 of 2018, has ordered for compliance of CBEC directions dated 24.10.2016. Thus, CCA Lucknow was explicitly directed by this Hon?ble Tribunal to implement the CBEC directions dated 24.10.2016 and that is what was done by CCA Lucknow by conducting review DPC/DPC dated 19.02.2021 and by issuing Establishment Orders dated 19.02.2021.

9. That, after the issuance of Establishment orders dated 19.02.2021, various representations have been received from DEOs for re-assigning their seniority in compliance of the order of the Hon?ble Supreme Court in D.Raghu. Accordingly, CCA Lucknow conducted review DPC in the grade of Inspectors and other feeder grades on 24.03.2022 and subsequent Establishment Orders were issued on 22.04.2022. The said orders have been put on hold as per the directions of this Hon?ble Tribunal.

10. That, Revenue from Taxes is the lifeline of the Indian Economic system. Without proper Tax Administration, which is an essential part of the Government of India to collect the revenue for the country, the economic system may suffer drastically. Considering the requirement of the Tax Administration and the shortage of staff, which is already short up to the level of 35% in the grade of Superintendent, there is an essential need to streamline the process of promotions in all grades. It is administrative urgency to promote the Officers in different grades. No DPC in Superintendent grade has been conducted since last 05 years i.e. Since 2017. The necessary corrections in seniority, as made by Establishment Orders dated 19.02.2021 and 22.04.2022, may be seen as the required preparatory work to streamline the promotions.

11. That, regarding not affording any opportunity of hearing in violation of

principal of natural justice, it is submitted that the promotions as well as review of promotion/denial of promotion are governed by DoPT OM dated 10.04.1989.

Subsequent to a particular promotion when a promotion is found to have been done without observance of procedure or due to any other infirmities with reference to standing instructions of DoPT, the same DoPT OM provides for re-visiting such promotions by conducting review DPC of original DPCs without affording any opportunity of personal hearing or showing cause to the affected person(s). Since executive instructions of Government of India on promotions as well as demotions do not provide for a mechanism of showing cause or affording an opportunity of personal hearing before proceeding to nullify/modify/change any promotion already affected on the recommendations of DPC, therefore, this procedure was not exhausted in the instant case as it was not required to be so. Furthermore, this legal and factual stand is further supported by the Judiciary as well. The Hon'ble High Court of Madhya Pradesh vide its order dated 30.01.2006 in *Munna Lal Yadav Vs Dr. Hari Singh Gour and another*.

12. That, it is further submitted that, it is settled principle of law that even after giving an opportunity of hearing, if the same result is likely to come and the order has been passed without affording an opportunity of hearing, in that eventuality, the order would not be vitiated 2018 (2) UPLBEC) 1041 and 2020 SC Online SC 847 *State of U.P. Vs Sudhir Kumar*.

13. That, it is trite law that Rules of Natural Justice are not embodied rules. They cannot be put in strait jacket. The purpose of rules of natural justice is to ensure that the order causing civil consequences is not passed arbitrarily 2011(8) Supreme 8.

14. That, the parity being sought with the applicants in Original Application No. 3996 of 2018 filed in Principal Bench of Central Administrative Tribunal is out of place and context as the applicants in the present Original Application were not the applicants in the said Original Application filed before the Central Administrative Tribunal Principal Bench New Delhi and by virtue of this they cannot claim exemption from departmental action with respect to promotion. Further, the order for status quo cannot be treated in general. It is the accepted principle of law that any interim relief can only be availed by the applicants/petitioners. Furthermore, the order passed by Central Administrative Tribunal Principal Bench New Delhi in Original Application No. 3996 of 2018 is only an interim order. An interim order does not contain sufficient facts allowing for examination for criteria of being similarly situated. Unless detailed facts and circumstances are brought forth by the Court of law, the fact of similarly situated do not come in the realm of reality. Plea of similarly situated, if at all to be worth of reasonable consideration can only be with respect to any final order.

15. That, it is further submitted that, it is quite relevant to note that the Central Administrative Tribunal Principal Bench New Delhi in the matter of *Saulesh Kumar* has held that, corrective action on 382 upgraded posts be taken by the

department and stayed DPCs in the grade of superintendent. This Hon'ble Tribunal vide interim order dated 05.07.2018 in Original Application No. 1490 of 2017 and Original Application No. 449 of 2018, has ordered for compliance of CBEC directions dated 24.10.2016. As can be seen the respondent CCA Lucknow was explicitly directed by this Hon'ble Tribunal to implement the CBEC directions dated 24.10.2016 that is, what was done in the instant case. Thus, balance of judicial interpretation and convenience lie in favour of the department.

16. That, the out of context and irrelevant reference to Article 311 of the Constitution of India is unwarranted and uncalled for as it deals with dismissal, removal or reduction in rank in respect of members of civil service where departmental/disciplinary proceedings are underway. Promotions/review of promotions are dealt with vide DoPT OM dated 10.04.1989 where inquiry/show cause in not provided for parallel drawn is unsubstantiated.

17. That, it is further submitted that, only the seniority of the officers is affected as they have been re-promoted to the Grade of Inspector. Some of the Officers reverted to their original positions vide Establishment Order No. I/A/CCSC/11/2021 dated 19.02.2021, however, could not be promoted again to the post of Inspector for the reason of their being untraceable/voluntary resignation/Inter Zonal Transfer/pendency of disciplinary proceedings. Save for these specific instances, numbering total 60 where re-promotions could not be procedurally made, all the officers reverted vide Establishment Order No. I/A/CCSC/11/2021 dated 19.02.2021 were promoted again vide subsequent Establishment Orders issued on the same date. Out of these 60 Officers, who have been re-promoted for the reason of their being untraceable/voluntary resignation/Inter Zonal Transfer/pendency of disciplinary proceedings, is an applicant in any case before this Hon'ble Tribunal.

18. That, in view of the facts and circumstances stated above no case has been made out by the applicant and original application is liable to be dismissed with cost as such, otherwise the respondents shall suffer irreparable loss and injury. They have cited the following judgments:-

- a. 2011(8) Supreme 8-Chief General Manager Vs Surendra Nath Pandey (Para 18).
- b. 2018 (2) UPLBEC 1041, Dr. Mrs Mudhu Jain Vs State of U.P. (Para 11).
- c. 2020 SCC Online SC 847, State of UP Vs Sudhir Kumar Singh (Para 27, 28, 29, 30, 33, 35, 36, 37, 38 and 39).
- d. Judgment dated 08.07.1986 passed by Madras Bench of CAT in OA No. 509 of 1986 A Durairajan Vs G.M. Southern Railway (Para 11).
- e. Judgment dated 30.01.2006 passed by Hon'ble Madhya Pradesh High Court in the matter of Munna Lal Yadav Vs Dr. Hari Singh Gaur.

10. Respondents have particularly mentioned that in pursuance of the Court order and to correct the mistakes apparent on record misapplication of

availability of vacancies which were actually nonexistent due to up-gradation of certain posts to a higher cadre the impugned order was to correct the erroneous situation and to set the seniority right was made as per rules and procedure, hence, the same should be upheld and as there is no merit in the case of the applicants and hence, their case should be dismissed.

11. Supplementary counter affidavit has also been filed. Impleadment application is there with certain new parties. Supplementary affidavit has been filed on behalf of the respondents. Compilation of case laws has been filed by the applicants. Written arguments have been filed on behalf of the applicants.

12. Case came up for hearing on various occasions, from 05.01.2023, 12.01.2023, 24.01.2023, 30.01.2023, 15.02.2023, 14.02.2023, 15.03.2023 and lastly on 16.03.2023 when counsel for both the parties were present and heard in detail. We have gone through the entire records and considered the rival contentions of the parties carefully.

13. From the averments from both the sides it is very clear that basic facts are not disputed. Applicants were promoted on substantive basis through various promotion orders issued between 2002 to 2017 and they were summarily demoted to the feeder grade vide the impugned order dated 19.02.2021 by means of the review DPC revisiting DPCs effected from 2002 to 2017 without affording opportunity and any notice to the applicants and assigning any reasons in the order except that the said order was being done in compliance of some undisclosed CBEC/CBIC directions, and by another order issued on the same day 539 out of 711 Inspectors of CGST who were demoted were re-promoted again as Inspectors, but from much later dates, thereby divesting them of their seniority by several years and by means of another order also issued on the same day 106 of the demoted Inspectors were sought to be promoted as Inspectors but on ad-hoc basis against regular vacancies of direct recruitment quota with the rider that they will not form part of the regular strength of the Inspectors, will be shown separately and not be entitled to seniority in the grade of Inspectors, and another set of 66 Inspectors demoted vide the first order, were left demoted, have remained reduced in rank altogether. The main issue for our consideration is whether the three orders dated 19.02.2021 are as per law and procedure prescribed, or otherwise?

14. The main contention of the applicants is that these wholly un-precedented orders are in gross violation of principals of natural justice and as it entails serious civil consequences opposed to all norms and principles of service jurisprudence, in utter violation of Article 311 of Constitution of India and have the effect of divesting the effect of their hard earned promotions and unsettling of their long settled seniority positions with consequent snow balling effect, and in blatant contravention of settled legal principles of not disturbing the long settled seniority of any cadre enunciated by the Hon?ble Apex Court in a catena of judgments.

15. The applicants further rightly assert that the three orders had no reasons assigned within the order for doing such unprecedented change in their seniority effecting their future. And only through successive affidavit filed in this case the respondents are trying to reinvent justifications of the said impugned order dated 19.02.2021 by supplying innovative reasons which the applicants asserts cannot be done in view of proposition laid down by the Hon^{ble} Supreme Court in Mohinder Singh Gill's case. They assert that it may not be at this stage right to argue that the impugned orders have been passed in pursuance of their administrative order dated 24.10.2016 as they say that there was an interim order (status quo) dated 24.10.2018 from the Principal Bench of this Tribunal directing maintenances of Status-quo in OA No. 3996 of 2018 where the said administrative order dated 24.10.2016 was directly in challenge, and as the said document dated 24.10.2016 was a policy document on vacancies in the grade of Inspectors, the relief of status quo obviously can only be interpreted as status quo in respect of the entire proceedings emanating from the policy document dated 24.10.2016 in rem and not just the status quo for the individual applicants in that OA. Hence, the said order dated 19.02.2021 is also in breach of the judicial order passed by the Principal Bench of this Tribunal (supra). The applicants have also relied several rulings of the Hon^{ble} Apex Court on long settled seniority not to be disturbed. They also bring to our notice case law of the Hon^{ble} Apex Court on what is reasonable period of lapse which can be considered as long enough to settled the seniority not to be further disturbed and challenged and as ruled by the Hon^{ble} Supreme Court three to four years is that as in K.R. Mudgal vs. R.P. Singh and others (AIR 1986 SC 2086) in clear words that seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, they want to argue that 3 to 4 years is a reasonable period for opening the seniority list. Hence, they argue that as their promotions were more than 3 to 4 years earlier than the impugned orders, so the said impugned orders were in contravention of the ratio of judgment in the said case. Certainly there is force in the argument of the applicants.

16. They further quote that in cases of reversion Hon^{ble} Apex Court in several cases including Shekhar Ghosh vs. Union of India and others [2007 (1) SCC (L&S) 247] has held that whenever there is civil consequences upon a Government servant even if on a mistake by a Government the principle of natural justice are to be following before any prejudice is passed to a Government servant, they also assert that when a person is regularly promoted, he cannot be reverted without following the due process of law, as reversion is a designated penalty under Rule 1 of CCS (CCA) Rules, 1965. Hence, the view of the Court is that before reversion it is an admitted position, reasonable opportunity to show cause has to be afforded to the affected party, otherwise such orders will be vitiated. This line of argument also appears to be forceful.

17. They further quote the case of Ram Ujarey vs. Union of India and others [1991 (1) SCC 685] where it is emphatically said that it is not open to the respondents to make up their mind unilaterally on facts which could have been

shown by the appellant to be not correct but this chance never came as the appellant, at no stage, was informed of the action which the respondents intended to take against him. And hence, even if some mistake sought to be rectified, by reasons there of an employee has to suffer civil consequences, ordinarily the principles of natural justice are required to be complied with. They further quote the case of B.S. Bajwa vs. State of Punjab and others [(1998) 2 SCC 523] wherein the Hon^{ble} Apex Court observed, ".....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". So they assert that once the seniority had been long fixed and it remains in existence for a reasonable period of time, it cannot be changed or challenged on any ground whatsoever, and they rely on a catena of judgments:-

- i. Vide Aflatoon and others vs. Lt. Governor, Delhi and others – AIR 1974 SC 2077;
- ii. State of Mysore vs. V.K. Kangan and others – AIR 1975 SC 2190
- iii. Pt. Girdharan Prasad Missir vs. State of Bihar and others – (1980) 2 SCC 83
- iv. Bhoop Singh vs. Union of India and others – AIR 1984 SC 866
- v. Ramjas Foundation and others vs Union of India and others – AIR 1992 SC 1414
- vi. Ram Chand vs. Union of India (1994) 1 SCC 44
- vii. State of Maharashtra vs. Digambar – AIR 1995 SC 1991
- viii. Municipal Corporation of Greater Bombay vs. Industrial Development vs (P.) Ltd and others – (1996) 11 SCC 501
- ix. Padma vs. Dy Secy. To the Government of Tamil Nadu – (1997) 2 SCC 627
- x. Hindustan Petroleum Corp. Ltd. Vs. Dolly Das – (1999) 4 SCC 450
- xi. Life Insurance Corporation of India vs. Jyotish Chandra Biswas – (2000) 6 SCC 526
- xii. L. Muthu Kumar and another vs. State of Tamil Nadu and other, (2000) 7 SCC 618
- xiii. Municipal Council Ahmednagar and another vs. Shah Hyder Beig and others – AIR 2000 SC 671
- xiv. Indra Jit Gupta vs. Union of India and others – (2001) 6 SCC 637

18. They further quote the principles of sit back theory "accepted by the Hon^{ble} Supreme Court reported in Rabindra Nath Bose and others vs. Union of India and others [AIR (1970) SC 470] where it was held, "Each person ought to be entitled

to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years". As it will be unjust to deprive a person who have been promoted many years ago of the rights that had accrued to them regarding rank and seniority by purporting to conduct a review of promotion after a lapse of long time and the decision was followed in 1973 KLT 151 (FB). Even in the case of Shib Shanker Mahapatra vs. State of Orissa [AIR 2010 SC 706] the Hon?ble Apex Court has laid down that delay in challenging the seniority within a reasonable period is fatal, and the reasonable period of challenging the seniority is 3 to 4 years and nothing beyond. And same analogy applies to the employer for opening seniority after a lapse of more than 4 years. The ratio of these judgments clearly strengthen the case of applicants.

19. Respondents main arguments are that as for the promotion orders DPC no notice or opportunity is necessary or required to be given. Hence, for demotion DPC also there was no necessity for any notices. They further assert that no provisions in the DOPT OMs are there for doing so before a DPC and, hence the said order does not suffer any infirmity. And to support they given a Single Judge of Hon?ble MP High Court order dated 30.01.2006 in Munna Lal Yadav vs. Dr. Hari Singh Gaur, but the said order is quite distinguishable on the facts and circumstances as there are many Hon?ble Apex Court judgments clearly on the point that even if a case of promotion having been given by mistaken facts that is not a result of any fraud or misrepresentation on the part of the employee, it cannot be taken away without following the principles of natural justice, and in the present case it is not denied that impugned orders were passed without giving notice to the applicants. Hence, this line of the argument of the respondents do not appear to be convincing.

20. We have to agree with the relevance of Citation by the applicants of Hon?ble Supreme Court in Civil Appeal No. 5714 of 1998 – Ram Ujarey vs. Union of India [1999 (1) Apex Court J 0432 (SC)] the Hon?ble Apex Court has rules that an employee who had been promoted to a post cannot be reverted back to lower grade without giving him opportunity of being heard even if promotion was allegedly given due to mistake of administration in reckoning his service tenure.

21. We also have to note of the principle of 'Sit Back Theory' which has been accepted by the Hon?ble Supreme Court long back. Various Courts also have followed the same in a number of decisions. The earliest decision of the WPC 4643 & 10475 Supreme Court in this respect is the one reported in Rabindra Nath Bose & Others v. Union of India & others (AIR 1970 SC 470). In that decision the Supreme Court held as follows:

"Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after a lapse of a number of years."

22. The above decision was followed by the Hon?ble Apex Court order in 1973

KL T 151 (FB). The Hon'ble Court observed that no statutory appeals or revision petitions are shown to have been filed against the orders of promotion and it must be taken that those lists had become final. It is not in the interests of the maintenance of the morale, efficiency and contentment in the service to disrupt after such long lapse of time matters pertaining to vital service conditions like seniority and rank which have already become settled. Thus it is quite clear that it will be unjust to deprive persons who had been promoted many years ago of the rights that had accrued to them regarding rank and seniority by purporting to conduct a review of the promotion after the lapse of many years. As in the Hon'ble High Court of Kerala in Writ Petition No. 4643 of 2010 – Nazaruddin and others vs. State of Kerala and others dated 09.12.2010. In the same judgment it is further observed that, "Even with respect to the rectification of mistake, the Apex Court in para 19 of the judgment in Shekhar Ghosh v. Union of India and another {(2007) 1 SCC 331}, held that, "if a mistake is to be rectified the same should be done as expeditiously as possible. (See Board of Secondary) WPC 4643 & 10475 Education of Assam v. Mohd. Sarifuzaman - {(2003) 12 SCC 408}.

23. In the case of Shekhar Ghosh vs. Union of India & Others, 2007 (1) SCC (L&S) 247 the Hon'ble Supreme Court has held that whenever civil consequences ensue upon the Government servant, even if it is on a mistake by the Government, the principles of natural justice are to be followed before any prejudice is caused to a Government servant and it is also trite that when a person is regularly promoted, he cannot be reverted without following the due process of law, as reversion is a designated penalty under 11 of CCS (CCA) Rules, 1965. In this view of the matter we have no doubt in our mind as per the admitted position, that, before the reversion of the applicant, no reasonable opportunity to show cause has been accorded to them, which has vitiated the order of reversion.

24. The argument of the respondents that, "the promotion guidelines do not provide for any notice to the affected parties. Hence, for demotion also no notice was required for holding of DPC and consequent demotion orders did not suffer due to lack of notice and due process of law", is not convincing. The stand of the respondents that theory of adverse civil consequence does not apply in cases of mistakes, also does not appear to be convincing as the said mistake which is long recurrent and persistent in nature over decades does not given confidence that the authorities are now right suddenly and not erring in arriving at the right decision about the nature of vacancies in the organization. With long settled seniority and legitimate expectation of the applicants, the applicants have acquired some rights, and by merely saying that there was some error, cannot justify unilateral, dramatic, sudden and entirely reverse decision without giving opportunity to be heard to the affected parties. And, decision where employee cannot put forth their perspective, where such long standing and recurrent ? alleged error? is purported to be corrected without due notice, may not wholly be justified. It is not the case that these employees do not hold requisite qualification to be promoted, the dispute is regarding vacancy only, nor in any

way they are responsible for any mistake or deliberate manipulation on their part to get such promotion, we do not find any iota of merit that principles of Audi alteram partem could be dispensed with in the instant case. Definitely stakeholders who are affected adversely should get an opportunity to put forth their perspective and a chance to understand the new interpretation. The facts of these cases are very different and distinct and required due notice to the parties affected and ample opportunity to be heard before taking any drastic decision.

25. The next arguments of the respondents that impugned orders have been passed in compliance of CAT, Bombay decision in OA No. 454 of 2006 dated 06.06.2007 that was confirmed by Hon'ble Bombay High Court vide judgment and order dated 28.10.2013 and 16.01.2014 passed in Writ Petition No. 298 of 2013 and Writ Petition No. 4262 of 2013, but on simple perusal of the facts of the case it is amply clear that in the said WPs the applicants were not parties and also there was no direction about opening and revisiting old promotions and to review old settled seniority in the cadre of Inspectors in the department. And, from the record it is also evident, that the Writ Petition No. 298 of 2013 and Writ Petition No. 4262 of 2013 were not decided, but withdrawn by the respective parties, and those were not decided and adjudicated on merit. Also there is no disclosure about the said order of the Court in the impugned orders that the impugned orders were in pursuance to those Court's orders. These justifications have been coming post facto only in the counter affidavit and arguments before this Tribunal. The orders must speak for themselves and any further elaboration and explanation later during the course of adjudication in counter affidavit and supplementary affidavit may not add to the strength to the original order and make them speaking. Reinventing justification post facto by supplying innovative reasons, rightly the applicants argue that can not be strengthening the original order as ruled in the case of Hon'ble Supreme Court in Mohinder Singh Gill's case (supra).

26. The respondents further states that demotions have been ordered on the basis of order dated 24.10.2016 and which was passed on the basis of a committee report and because the department was of the considered view that promotions had wrongly been made in the remote past against 382 posts of inspectors in the Lucknow zone that were upgraded to the post of Superintendent. But from the record it is evident that the said order (Policy proposition on availability of vacancies) dated 24.10.2016 and its correctness and legality is still under challenge before CAT, Principal Bench in OA No. 3996 of 2018 and various other Benches of the Tribunal and has yet to attained finality, as it was an interim order (status quo) against a general policy statement where no specific parties are mentioned. Hence, any interim order against such policy document cannot be read as being in-personam for only few who approached to challenge the same, but in rem for the benefit of everyone who might directly or indirectly be affected by the same. Nothing has been placed before us by the respondents to convince us that the contents of the order dated 24.11.2016 was on sound footing or have been scrutinised and affirmed by any judicial forum,

whereas it is a fact that it is still subjudice before the CAT Principal Bench and a status quo order operates for the same. Multiple cases on the similar subject at various judicial forums, where only part and fragmentary facts are placed, gives us little confidence about the contents of letter dated 24.10.2016, as in the absence of complete facts we all are merely examining and trying to understand the proverbial elephant by the few wise men and arriving at divergent conclusions.

27. Hence, even if the respondents were of the view that promotions given by them in the remote past were wrongly given, they could not have suddenly demoted the applicants without first giving them ample opportunity of being heard as they were going to be demoted and their long settled promotion was to be unsettled again. So that, through the show cause process they could have heard their perspective on the issue and tried to appreciate the situation in a more holistic and complete manner. As the said OA (where order dated 24.10.2016) is still pending and the issue of letter dated 24.10.2016 is sub-judice before the CAT, Principal Bench, to be decided on merit, the present order of unsettling the seniority of large number of incumbents including the applicants appear to be premature. Also it is difficult to connect the committee report and the document dated 24.10.2016 and the fore running impugned orders of CAT Bombay Bench and Hon^{ble} Bombay High Court order, as there is a long gap of time which separates them and the time gap is unexplained.

28. Respondents have further argued that the impugned order dated 19.02.2021 has been passed as per the direction of the CAT, Allahabad Bench in OA No. 449 of 2018 and OA No. 1490 of 2017 dated 05.07.2018 to implement the order dated 24.10.2016, but from the simple perusal of that order dated 05.07.2018, it is evident that it is a brief interim order without getting into the merit of the said case. And, full submissions have not been made in the said case to apprise the Tribunal of all the pros and cons of unsettling long settled seniority etc., and said interim order does not disclose if the respondents placed all the relevant facts that if long settled seniority was revisited it will affect many incumbents, who were not before the Tribunal to put forth their case. Furthermore, when they were going ahead with the impugned order on 19.02.2021, there was already the status quo order of CAT, Principal Bench in OA No. 3996 of 2018 dated 24.10.2018. If the existence of such status quo order alongwith all the facts of the case were brought to the notice of CAT, Allahabad in OA No. 449 of 2018 and 1490 of 2017, the consequences could have been different. The multiple cases show that department had been giving measured information before each forum – giving some and withholding some other.

29. Furthermore, order dated 24.10.2018 could be implemented on 19.02.2021, through the three impugned orders, which appears to be long delayed, but also in haste and is unexplainable as already 2½ years had passed since the said order of the CAT, Allahabad Bench had remained unimplemented. We do not find anything on record which shows that the respondents took pains to apprise every

Court the full purport and consequences of such delayed unsettling of long already settled seniority. Hence, rationale of linking order dated 24.10.2018 to the present impugned orders is not convincing.

30. Considering all the above facts, we are of the considered view, that department has been far from competent in cadre management of Inspectors in deciding simple matters like how many vacancies and cadre strength was there at any point of time in the department, and in taking prompt and right decision to fill the vacancies as per their cadre rule on direct recruitment or promotions without giving any opportunity to any stake holder to complain and being aggrieved, and their indifferent approach gave various Courts? opportunity to intervene in their simple function of maintaining cadre strength and seniority list. Evidently the department has been casual in deciding on cadre strength and vacancies and effecting various promotions promoting various persons in various years and then suddenly without due process of law, unsettling the settled seniority unilaterally, and then post facto trying to link it to various Court orders. By their recurrent and persistent act of giving promotions based on the earlier set of interpretation of cadre rules the department had long lost its inherent power to reopen the old long settled seniority on simple pretext of embarking on some correction of clerical error. They should have first given due notice to all the affected stakeholder of changed interpretation and their intention to act upon the same, so that those affected were enabled to place their case before them or have gone to appropriate judicial forum to get it set right. The whole affair does not speak about the diligence of the Personnel department in the organization, who should be conversant on the matter and should be prompt in providing complete information to various authorities within the department and various Judicial forums to decide the matter. Instant systemic and grave mistake in cadre management of Inspectors, which has far reaching impact on 701 Inspectors and their life and future and many more Inspectors and other related cadres, the department should have fixed responsibility first within the department and identified who were accountable and take action against them, instead of only launching massive demotion exercise, so that the said mistakes are not repeated and all the stake holders were satisfied. In the absence of such action, how one should be convinced that in few months down the line the department may not further change their view or reinterpret the situation as was the vacancy interpretation earlier.

31. We are of the considered view that impugned three orders dated 19.02.2021 were not after due process of law after affording ample opportunities to all the affected parties to be heard, as their unsettled seniority was going to be effected, and as they had long term financial, promotional and other consequences for the concerned officers and their families as seniority and promotions has great bearing on morale and physical and mental wellbeing of the officers, there is necessity to do revisiting of old promotions and long settled seniority after due care and caution to avoid any miscarriage of justice. In view of the ratio of judgments of Hon?ble Supreme Court in various case laws quoted

supra, we further find that the said orders are trying to unsettle long settled seniority, and the whole exercise was premature in view of the CAT, Principal Bench order on status quo on the document dated 24.10.2016, where in still document dated 24.10.2016 is under question and is being examined, and we also do not find any direction in the Bombay Bench (CAT) order referred by the respondents, which even remotely authorized them to open long settled seniority. Hence, we are of the considered view that only after, final disposal of the said case before the Principal Bench, the exercise to revisit long settled seniority may be undertaken, if so advised.

32. If department is in dire need of promoting individuals in higher grade to discharge their essential functions efficiently, they may do so by promoting people on ad-hoc basis based on the earlier long settled seniority list, subject to the Principal Bench order. We leave all other issues raised before us to be decided by the Principal Bench and the fate of all the applicants before us shall also be accordingly settled in due course of their judgment.

33. Accordingly, all the OAs are allowed and the impugned orders dated 19.02.2021 in all the OAs, are set aside, restoring the status quo ante for all the affected parties with all consequential benefits. The department may take note of the order of the Principal Bench (CAT) in OA No. 3996 of 2018 where in the said order dated 24.10.2016 was under challenge and direction to maintain status quo prevailed, for taking further action. Copy of this order be placed in all the connected OAs.

34. All associated MAs are accordingly disposed off. No costs.