

(1988) 03 PAT CK 0016

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2223 of 1987

Ram Swaroop Das and others

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 16-03-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1), 309

Citation : (1989) PLJR 143

Hon'ble Judges : N.P. Singh, J; Bishwanath Agrawal, J

Bench : Division Bench

Advocate : G.L. Sanghi, L.P. Singh, S.P. Mukherjee, S. Mukherjee, C.S. Prasad, for the Appellant; Shanti Bhushan, Basudeva Prasad, Sunil Kumar, Ravi Shanker, Ganesh Prasad Singh and Mr. S.N. Jha, S.C. II with Mr. K.K. Thakur, J.C. to S.C. II. for the State, for the Respondent

Final Decision : Allowed

Judgement

N.P. Singh, J.—The petitioners, who are members of the Bihar Finance Service (hereinafter referred to as "the Service"), have questioned the validity of the gradation list prepared by the State Government which was published on 18.4.1987. The controversy in the present writ application is in respect of the seniority of the petitioners vis-a-vis respondent nos. 4 to 61 (hereinafter referred to as "the respondents"). The petitioners were directly recruited to the Senior Branch of the Service. The respondents had been appointed initially to the Junior Branch of the Service and later they became members of Senior Branch of the Service by merger of the two branches of Service. The appointment through direct recruitment or promotion is made in accordance with the provisions of the Bihar Finance Service Rules, 1953 (hereinafter referred to as "the Rules") which have been framed under Article 309 of the Constitution.

2. It is the case of the petitioners that in the year 1971-72 the Governor declared 29 vacancies in accordance with Rule 6 of the Rules aforesaid, which were to be filled up by direct recruitment. In due course applications were invited

by the Bihar Public Service Commission (hereinafter referred to as "the Commission") and after a competitive examination the petitioners were appointed to the Senior Branch of the Service on the recommendation of the Commission by the State Government by notifications dated 15.5.74 and 24.5.74. On the date the petitioners were appointed to the Senior Branch of the Service, respondents were the members of the Junior Branch of the Service.

3 On 1.4.1975 a decision was taken by the State Government to merge the Junior Branch Officers into Senior Branch. According to that decision the officers of the Junior Branch were to be amalgamated/merged within three years from the said decision, 1/3rd in order of seniority with effect from a date in the year 1974, the next 1/3rd from a date in the year 1975 and the rest 1/3rd from a date in the year 1976.

4. By notification dated 2.11.1975 State Government amalgamated/merged the 1/3rd officers of the Junior Branch with the Senior Branch with effect from 1.4.1974. In view of the notification aforesaid respondent nos. 4 to 8, 16 to 28 and respondent No. 37 became members of the Senior Branch with effect from 1.4.1974. By another notification dated 2.11.1975 the services of other members of the Junior Branch were merged to the Senior Branch of the service with effect from 1.4.1975. Because of this notification respondent nos. 9 to 15 and 29 to 61 (excluding respondent No. 37 who had already become the members of the Senior Branch under the earlier notification) became members of the Senior Branch with effect from 1.4.1975.

5. Later the State Government by a notification dated 29.9.1978 promoted respondent nos. 4 to 15 from the Junior Branch of the Service to the Senior Branch with effect from different dates in the year 1973-74. The retrospective promotions were given to those respondents because those posts were lying vacant since 1973-74.

6. Although in view of notification dated 2.11.1975 aforesaid merging the services of the respondents 4 to 8, 16 to 28 and 37 from Junior Branch with effect from 1.4.1974 and again by notification dated 29.9.1978 promoting respondent nos. 4 to 15 from Junior Branch to the Senior Branch with effect from the dates in the year 1973-74, those respondents were made senior to the petitioners, who entered in the senior branch service on 15.5.1974 and 24.5.1974, department treated the petitioners throughout senior to these respondents till the impugned gradation list was issued placing not only respondent nos. 4 to 28 and 37 but even those respondents whose services had been merged from Junior branch to senior branch with effect from 1.4.1975 and in respect of whom there was no order of promotion.

7. According to petitioners as the services of respondent nos. 29 to 61 (excluding respondent No. 37) from Junior Branch to the Senior Branch were merged by notification aforesaid dated 2.11.1975 and in respect of whom there is no order of promotion, they can never rank senior to the petitioners as petitioners had

already entered in the Senior Branch of Service on 15.5.1974 and 24.5.1974, much before these respondents. I fail to understand as to how in the gradation list these respondents have been placed above the respondents. Even if all the orders and notifications issued by the State Government from time to time are held to be valid, those respondents who entered into the Senior Branch of Service on the basis of merger with effect from 1.4.1975 cannot supersede the petitioners in the matter of seniority because the petitioners were already in the Senior Branch much prior to 1.4.1975. The learned counsel appearing for these respondents pointed out that some orders have been passed in the files even in respect of these respondents later. However, he had to admit that before the gradation list was notified State Government has not issued any order merging their services into senior branch from a date prior to 15.5.1974. It is well known that no right or claim can be made or advanced merely on the basis of nestings or orders in the files of the State Government. Reference in this connection may be made to the well known judgment of the Supreme Court in the case of Bachhittar Singh v. State of Punjab and another AIR 1963 Supreme Court, 395. It was also submitted on behalf of aforesaid respondents that as they have been confirmed on 7.7.1984 with effect from 1.4.1976 it shall be deemed that then services from junior branch to senior branch were merged with effect from 1.4.1974. It is difficult to accept this contention. Merger from a retrospective date cannot be inferred from this circumstance, when the order dated 2.11.1975 says it shall be with effect from 1.4.1975. As such, the claim of seniority by the petitioners over these respondents does not need much scrutiny or examination and has to be accepted.

8. The real controversy appears to be in respect of the seniority of the petitioners vis-a-vis the remaining respondents. If the notification dated 2.11.1975 merging services of respondents 4 to 8, 16 to 28 and 37 with the senior branch with effect from 1.4.1974 and notification dated 29.9.1978 promoting the respondents 4 to 15 from Junior Branch to the Senior Branch with effect from different dates in the year 1973-74 are valid, then these respondents should rank senior to the petitioners, who entered in the senior branch on 15.5.1974 and 24.5.1974. But the question as to whether the State Government could have merged the services of the respondents, mentioned above or, could have promoted them from Junior Branch to the Senior Branch with retrospective dates affecting the rights of the petitioners, who were already members of the Senior Branch. There is no dispute that on 1.4.1975 when the merger decision was taken petitioners were in the Senior Branch of Service whereas the respondents aforesaid were in the Junior Branch of service. Even after the merger and promotion with retrospective dates, the petitioners have been throughout treated as seniors to these respondents even by the State Government. Petitioners were promoted as Assistant Commissioners of Commercial Taxes on 26.11.1982. They were confirmed on 18.6.1984, ON 26.11.1984 petitioner nos. 1 and 2 were given further promotion. Whereas respondent nos. 8, 10, 11, 21 to 25, 32, 43, 45 to 51, 53 to 61 were, promoted to the posts of Assistant Commissioners of

Commercial Taxes by notification dated 26.12.1984 two years after the petitioners. It appears that some of the respondents, such as 4 to 7, 9, 13, 16, 20, 26, 29, 31 although promoted as Assistant Commissioners on 26.11.1982 along with the petitioners, but in the notification they were placed below the petitioners.

9. In this background it has to be examined as to whether the notification dated 2.11.1975 merging the services of respondents 4 to 8, 16 to 28 and 37 with effect from 1.4.1974 is valid and survives the tests of Articles 14 and 16 of the Constitution. It may be pointed out at the outset that the said notification is based on an executive decision and purports to implement the decision of the State Government dated 1.4.1975 merging the services of the members of the Junior Branch service to Senior Branch service.

10. From time to time there has been controversy about fixation of seniority in the service between persons appointed by process of direct recruitment and by promotion. In most of the services quota has been fixed for filling up the posts by direct recruitment and promotion. In the case of N.K. Chauhan v. State of Gujarat AIR 1977 Supreme Court, 251, it was observed:--

(c) Seniority, normally, is measured by length of continuous, officiating service the actual is easily accepted as the legal. This does not preclude a different prescription, constitutionality tests being satisfied.

Again in the case of Paramjit Singh v. Rakha Mal AIR 1983 Supreme Court, 314 it was pointed out:--

Ordinarily speaking where recruitment is from two sources with a view to integrating recruits from both sources after the recruitment seniority is determined from the date of entry into the cadre except where there has been a substantial violation of the quota giving undeserved advantage to one or the other source. Seniority ordinarily speaking is determined with reference to the date of entry into the cadre which in service jurisprudence is styled the date of continuous officiation.

The Supreme Court in the case of Ramendra Singh v. Jagdish Prasad (A.I.R. 1984 Supreme Court, 885) observed as follows:--

In view of this clear authority, it cannot be argued for the appellants that they could be appointed with retrospective effect so as to affect the seniority of the respondents. The orders dated 18th August and 26th September, 1964 which purported to appoint the sub-overseers named therein as temporary overseers from the date of publication of their result of diploma examination are clearly violation of Arts. 14 and 16 of the Constitution in as much as the petitioners had already been appointed as overseers by selection committee constituted under the rules contained in P.W.D. Code. The order of temporary appointment by the impugned orders dated 18th August and 26th September, 1964 conferred national seniority on the contesting respondents for the period while they were

actually working as sub-overseers in the lower scale outside the cadre of overseers. The High Court in our opinion was fully justified in allowing the writ petition in part.

11. Yet in another case of *A.N. Pathak v. Secy to the Govt., Ministry of Defence* (A.I.R. 1987 Supreme Court, 716) the Supreme Court declared the rule in valid which was purported to give notional seniority in that case to the appointees by process of direct recruitments on the plea that there was inordinate delay in making direct recruitment. In that context it was pointed out as follows:--

The learned counsel for the respondents found it difficult to justify the validity of rules and the lists in the light of the various decisions of this Court which have consistently leaned in favour of the promotees based on their length of service and seniority, in cases where there was inordinate delay in making direct recruitment. He tried to justify the inequity saying that the new rules have tried to rectify it. We are not satisfied with this explanation since that is little consolation to the petitioners.

The Supreme Court again emphasised that for the purpose of determination of the seniority between the appointees from the different source the real tests should be the length of service. In other words, as to which group entered into the service first.

12. The seniority and the right of the persons who have entered into the service earlier cannot be jeopardised and ignored on a plea that but for the process of selection having not been delayed the persons entering in service later would have entered into the service earlier. In the case of *T.R. Kapur and ors v. State of Haryana & ors.* (A.I.R. 1987 Supreme Court, 415), the rule framed under Article 309 of the Constitution giving retrospective benefits to one group of appointees was held to be violative of Articles 14 and 16 of the Constitution. It was pointed out:--

...there is no power to make such a rule under the proviso to Art. 309 which affects or impairs vested rights. Therefore, unless it is specifically provided in the rules, the employees who are already promoted before the amendment of the rules cannot be reverted and their promotions cannot be recalled. In, other words, such rules laying down qualifications for promotion made with retrospective effect must necessarily satisfy the test of Arts. 14 and 16 (1) of the Constitution.

13. This Court has also expressed the same view in cases of *Girija Shankar Mairh v. The State of Bihar and other* (1972) PLJR 314 and *Gaya Prasad Pandey & anr v. The State of Bihar and others* (1972) PLJR 464. Recently the same question was examined by this Court in case of *Jitendra Prasad Srivastava v. The State of Bihar and others* C.W.J.C. No. 5699 of 1986 disposed of on 24th September, 1987 (1988 PLJR 265) in context with the inter seniority between direct recruits and promotees in the Bihar Excise Service. This Court quashed a notification of the State Government giving notional seniority to direct recruits over the

promotees on a plea that posts against which the persons were appointed by process of direct recruitments were lying vacant since several years before they were actually appointed, applying the quota rule.

14. When notional seniority given to one group of the appointees over the other through Rules framed under Article 309 of the Constitution has been held to be ultra vires on the ground that it is violative of Articles 14 and 16 of the Constitution as it purports to affect the seniority of persons, which has been fixed with effect from the date of entry in the service. I fail to understand how by notification dated 2.11.1975 which was issued on the basis of an executive decision, the services of the aforesaid respondents 4 to 8 and 16 to 28 and 37 were merged from Junior Branch of service to Senior Branch of Service with effect from 1.4.1974 and they have been placed above the petitioners, who had entered into the Senior Branch of service before those respondents on 15.5.1974 and 24.5.1974. There is nothing in the notification dated 1.4.1975 or 2.11.1975 giving any reasonable justification for merging the services of members of Junior branch to the Senior branch of service with a retrospective date so as to affect the seniority of the petitioners in service. As such there is no escape from conclusion that merging the service of the respondents aforesaid from Junior Branch to the Senior Branch with effect from 1.4.1974 on the basis of a decision of merger taken by the State Government on 1.4.1975 aforesaid, cannot affect the seniority of the petitioners. Perhaps, that is the reason why the State Government treated the petitioners senior to those respondents in spite of the notification dated 2.11.1975 and promoted the petitioners as Assistant Commissioners, Commercial Taxes, before those respondents.

15. The same has to be said in respect of notification dated 29.9.1978 promoting respondents 4 to 15 from Junior Branch to the Senior branch of service retrospectively with effect from different dates in the year 1973-74. It was possible to uphold the said notification if the case of the respondent would have been that they were officiating on the posts in the senior branch from dates prior to the entry of the petitioners in the senior branch. There is no assertion that the aforesaid respondents were officiating on posts in the senior branch prior to the decision of merger. As such the promotion of those respondents from retrospective dates to the senior branch of service from Junior branch of service cannot affect seniority of the petitioners who were recruited to the Senior Branch of Service before them. The State Government rightly ignored this notification as well while promoting the petitioners as Assistant Commissioners of Commercial Taxes on 26.11.1982. As already pointed out that some of the respondents although promoted as Assistant Commissioners by the same notification dated 26.11.1982 along with the petitioners were placed below the petitioners and rest were promoted as Assistant Commissioners, Commercial Taxes, by notification dated 26.12.1984 much after the petitioners.

16. On behalf of the respondents it was pointed out that pursuant to the decision of merger taken on 1.4.1975, by a notification dated 2.11.1975, 102 posts of the

junior branch of service were upgraded to the senior branch of service with effect from 1.4.1974 and as such services of respondents 4 to 8, 16 to 28 and 37 could have been merged in the senior branch with effect from 1.4.1974. In this connection reliance was placed on a Full Bench judgment of this Court in the case of Madan Mohan Prasad and others v. Government of Bihar and others AIR 1970 Patna, 432. In that case the posts which were held by some of the respondents were upgraded from retrospective date. This Court held that the aforesaid action was permissible if it did not violate any other law or principle. It was, however, clearly stated that in facts and circumstances of that case it did not amount to giving fictional or notional seniority. In the present case from a bare reference to the decision of merger dated 1.4.1975 itself it shall appear that the junior branch of service and senior branch of service were not merged outright. It was decided to merge the services of the members of the junior branch into senior branch in phases. According to that decision services of 1/ 3rd members of the junior branch was to be merged from a date in the year 1974. The date 1.4.1974 was notified later by aforesaid notification dated 2.11.1975. One of the clauses of the decision of merger said that the statutory rules governing the recruitment to the junior and senior branches of the service shall also be amended. This amendment was introduced on 17.8.1981. In my view, the up gradation of 102 posts from junior branch to the senior branch and then merging the services of the respondents mentioned above with effect from 1.4.1974 amounts to only giving fictional seniority to such respondents over the petitioners.

17. Reference was also made on behalf of the respondents to the judgment of the Supreme Court in the case of K. Madhavan and Another Vs. Union of India (UOI) and Others, . In that case after a clear finding that the meeting of the Selection Committee was cancelled in a malafide manner. Supreme Court upheld the retrospective seniority given to the appointee, whose appointment, was under challenge. It is well known that if retrospective seniority is given to one set of employees in the same service, although recruited from different source, on some reasonable, rational principle, that shall not be violative of Articles 14 and 16 of the Constitution. In that case Supreme Court was satisfied that retrospective seniority given was not merely notional but rational. Even then Supreme Court observed, "The retrospective appointment or promotion to a post should be given most sparingly and on sound reasoning and foundation". In the present case there is no justification for merging the services of the respondents mentioned above from a date earlier than the entry of the petitioners in the senior branch of service. The only justification, which has been pleaded, is that the nature of the members of the junior branch of service and the senior branch of service was almost identical This, in my view cannot be held to be a reasonable or rational basis for affecting the seniority of the petitioners and that also by an executive decision. It need not be pointed out that on the basis of a competitive examination, those, who were more meritorious and had secured higher marks, were appointed in the senior branch of service; whereas those

who secured lesser marks at that examination were appointed in the junior branch of service. Normally after having been appointed to junior branch they could have entered into senior branch through process of promotion. As such even on the basis of the decision of merger, they could have entered into senior branch without affecting the seniority of persons, who were in the senior branch of service before their entry.

18. Reliance was also placed on the judgment of the Supreme Court in the case of *State Bank of India v. Yogendra Kumar Srivastava and others* AIR 1987 Supreme Court, 1399. After consideration of the different rules and orders, the Supreme Court came to the conclusion that the Probationary/Trainee officers were not in the service of the bank immediately prior to the appointed date i.e. October 1, 1979 and as such, they could not be held to be existing officers in face of the definition of the expression in paragraph 3(h) of the order. On that finding it was held that by the impugned order issued by the State Bank of India the Probationary/Trainee officers had not been prejudiced in the least by the order having come into force on or from October 1, 1979. In my view, the aforesaid judgment is of no help to the respondents in the present case because there is no dispute that the petitioners were in the service since 15.5.1974 and 24.5.1974 and the respondents entered into that senior branch of service on the basis of the notification dated 2.11.1975 with effect from 1.4.1974.

19. The judgment of the Supreme Court in the case of *K.S. Vora and Others Vs. State of Gujarat and Others*, is also of no help to the respondents. In that case the decision, which was under challenge, had been taken on the basis of the statutory rule framed under Article 309 of the Constitution. The Supreme Court after consideration of several resolutions, rules and other relevant materials, held that the decision was rational and not arbitrary. Once a decision even affecting the seniority of an officer is held to be reasonable or rational, there is no question of its being violative of Articles 14 and 16 of the Constitution. Same was the position in the case of *V.T. Khanzode and others v. Reserve Bank of India and another* (AIR 1982. Supreme Court, 917). Supreme Court clearly recorded a finding that the decision although affected seniority of some of the members of the service, but was reasonable and rational. In the present case there is no explanation justifying the decision of the State Government to merge the services of the respondents aforesaid with effect from a retrospective date. Same is the position in respect of the order of promotion from retrospective dates. During argument it was urged that as the respondents were doing the same nature of work even as members of the junior branch their services were merged with effect from 1.4.1974. About promotions it was pointed out that as posts in the senior branch were vacant since 1973-74, respondents 4 to 15 were promoted in the year 1978 with effect from dates in the year 1973-74. In my view by the orders aforesaid the State Government has given notional seniority to the respondents over the petitioners without there being any rational or reasonable basis. As such it has to be held that the action of the State Government in the present case is covered by those judgments of the Supreme

Court referred to above, which have condemned and depreciated giving notional seniority to a group of persons in the same service affecting the rights of others.

20. On behalf of respondents it was then urged that in view of an earlier judgment of this Court in a writ application filed on behalf of persons, who had been appointed by process of direct recruitment into the senior branch of service challenging the decision of merger taken by the State Government on 1.4.1975 which was upheld by this Court as well as by the Supreme Court, it is no more open to the petitioners to raise the same question in the present writ application. In this connection reference was made to the judgment of *Kartik Charan Jha v. State of Bihar* (1986 PLJR, 992). The petitioners of that writ application had been appointed to the senior branch of service by process of direct recruitment in the year 1976. They challenged the decision aforesaid dated 1.4.1975 of the State Government to merge the junior branch of service with the senior branch of service. This Court upheld that decision and rejected the claim of the petitioners of that application that they should rank senior to the persons who had entered into the senior branch of service from junior branch of service on the basis of merger. In other words, the validity of the decision of merger dated 1.4.1975 as well as the validity of the notification dated 2.11.1975 aforesaid merging the members of the Junior branch of service to the senior branch of service was held valid. In that connection after upholding the decision of merger this Court observed as follows:--

...the "Mergees" having joined the rank of Senior Branch Officers at a point of time when the direct recruits were not in existence, the former must reckon their seniority from the time they became members of the cadre of the Senior Branch Officers. The direct recruits were no where till December, 1976, when they were appointed by Annexures-2 and 3. Till then entire batch of "Mergees" had filled the rank of Senior branch Officers, the direct recruits had not found their birth in the Senior branch. The position is, therefore, obvious that "mergee" must be held to be senior to the direct recruits.

So far the petitioners of the present writ application are concerned, situation is entirely different. They had entered into the senior branch of service before the decision of merger was taken and services of respondents had been merged from junior branch to the senior branch. In the earlier case mergees having entered into the senior branch of service before the direct recruits, there was no question of such mergees affecting the seniority of direct recruits. But in the present case the respondents have been placed in the impugned gradation list above the petitioners, although the petitioners had entered into the senior branch of service before the respondents. In the earlier case, there was no occasion to consider this aspect of the matter. Accordingly, I am of the opinion that the earlier judgment in the case of *Kartik Charan Jha* (supra) does not stand in the way of the petitioners, who belong to a separate class of direct recruits. It may be mentioned that in view of the aforesaid judgment of this Court the petitioners did not challenge the decision of merger dated 1.4.1975. They have challenged only

the notification dated 2.11.1975 implementing the decision of merger in respect of some of the respondents with effect from 1.4.1974, as it affects the seniority of the petitioners without there being any rational basis.

21. It was then pointed Out on behalf of the respondents that some of the persons, who had been appointed by direct recruitment along with the petitioners had filed an application for review of the judgment of this Court in Kartik Charan Jha v. State of Bihar (1986 PLJR, 992), That review application having been dismissed, should operate as res judicata even against the petitioners. From a bare reference of the order dated 25.9.86 passed in Civil Review of 1986 it shall appear that the review application was dismissed, firstly on the ground that it was beyond time and there was no sufficient cause for condoning the delay in filing the application. Then it was observed that although the petitioners of that review application were not parties to the case of Kartik Charan Jha (supra), but as they were similarly situated, there was no substance in their prayer for reviewing the earlier judgment. Lastly, it was said in that order: --

Mr. Basudeo Prasad, learned counsel for the respondents submits that the present review application is not maintainable at the instance of a person, who was not a party to the earlier decision. The submission urged on behalf of the respondents appears to have substance.

As the said review application was dismissed primarily on the ground of delay, and on the ground that the petitioners of the review application were not parties to the earlier writ application, in my view, the aforesaid order shall not operate as res judicata. Apart from that there was neither any occasion to consider the grievance of the petitioners nor the inter se seniority between the petitioners and the respondents of the present application was decided, or could have been decided in that application for review. The cause of action for filing the present writ application has arisen only after the publication of the gradation list on 18.4.1987, whereas the review application, as already mentioned above, was disposed of on 25.9.1986. In the case of Ramchandra Shankar Deodhar and others v. The State of Maharashtra and others (AIR 1974 Supreme Court, 259) it was pointed out as follows:--

The petitioners were not persons directly and immediately affected by the judgment and it could not be said that they were necessary parties to the petition who should have been heard before the judgment was given, as was the case in Shivdeo Singh and Others Vs. State of Punjab and Others, . The petitioners had, therefore, no locus to apply for review of that judgment. Secondly, the subject matter of the present petition is, barring only one question which is common, namely, the question as to the validity of the second proviso to rule 1 of the Rules of 30th July, 1959, wholly different from that of the petitioner in Kapoor's case, and asking for review of the judgment in Kapoor's case would be no remedy at all so far as the reliefs claimed in the present petition are concerned. Lastly, the remedy by way of review of a judgment given in another

case in which the petitions are not parties can hardly be said to be an adequate alternative legal remedy available to the petitioners.

22. Lastly, it was submitted on behalf of the respondents that the petitioners should not be allowed to challenge the decision of the Government notified as early as on 2.11.1975 add 29.9.1978 and the present application should be dismissed on the ground of delay and laches on the part of the petitioners.) have already pointed out that in spite of those notifications the State Government itself throughout treated the petitioners as senior to the respondents of the present application and even promoted petitioners as Assistant Commissioners, Commercial Taxes, before the respondents. The cause of action has really arisen when these respondents have been placed over the petitioners in the gradation list, which was notified on 18.4.1987. This writ application is, accordingly, allowed. Placing respondent nos. 4 to 61 above the petitioners in the gradation list held to be invalid and violative of Articles 14 and 16 of the Constitution. The respondent-State is directed to make necessary corrections in the gradation list in the light of this judgment. In the circumstances of this case, there shall be no order for costs.

N. Agrawal, J.--I entirely agree.