

(2022) 03 BOM CK 0061
In the Bombay High Court
Case No : Writ Petition No.935 Of 2019

Sanjay D. Dhumaskar

APPELLANT

Vs

State Of Goa And Others

RESPONDENT

Date of Decision : 17-03-2022

Acts Referred:

Goa Government (Seniority) Rules, 1967 — Rule 4, 5

Citation : (2022) 03 BOM CK 0061

Hon'ble Judges : M.S. Sonak, J;R.N. Laddha, J

Bench : Division Bench

Advocate : A. F. Diniz, Ryan Da Piedade Menezes, Maria Correia, Sudesh Usgaonkar, Marie Rosette Pereira, D. Lawande, A. Kuncolienkar

Final Decision : Disposed Of

Judgement

M. S. Sonak, J

1. Heard learned counsel for the parties.
2. By Order dated 13.01.2020, we had made it clear that an endeavor would be made to dispose of this petition finally at the stage of admission. Accordingly, we issue Rule and further at the request of and with the consent of the learned counsel for the parties make this rule returnable forthwith.
3. The petitioner, who is currently serving as a Junior Engineer (Civil) (JE Civil) in the Electricity Department, Government of Goa challenges the following:-
 - a) The seniority list of JEs dated 13.05.2019 (impugned seniority list) by which the petitioner (Sanjay) was placed junior to respondent no.3 (Samir), thereby disturbing the seniority position that had prevailed for last over 21 years;
 - b) Order dated 15.11.2019 by which Samir, based on the aforesaid impugned seniority list dated 13.05.2019, was promoted to the post of Assistant Engineer (Civil) (AE Civil) w.e.f. 06.11.2019.

4. In this case, there is no serious dispute on the following facts that are germane for deciding the issues that arise:-

a) On the recommendations of the Departmental Selection Committee (DSC), Samir and Sanjay were appointed as JEs (Civil) on probation for two years in the office of the Chief Electrical Engineer (CEE), Electricity Department w.e.f 10.03.1997 and 31.03.1997 respectively.

b) Both Sanjay and Samir were confirmed on 21.12.1999 based on the recommendations of the DPC.

However, in the confirmation order dated 21.12.1999, Sanjay was shown at Sr.No.2, and Samir was shown at Sr.No.4;

d) Records establish that Samir did not react to the confirmation order dated 21.12.1999 in which he was shown junior to Sanjay;

e) The Goa Government (Seniority) Rules, 1967 (seniority rules) provide in Rule 5 how the seniority of direct recruits has to be determined particularly where persons recruited initially temporarily are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment. Rule 5 of the seniority rules reads as follows:-

" 5. Direct recruits. - Notwithstanding the provisions of rule 4, the relative seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointment, on the recommendations of the Union Public Service Commission or other selection authority, persons appointed as a result of earlier selection being senior to those appointed as a result of a subsequent selection.

Provided that where persons recruited initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment, seniority shall follow the order of confirmation and not the original order of merit."

Emphasis supplied

f) On 11.02.2002, 05.08.2008, and 12.10.2002 tentative seniority lists of JEs (Civil) were circulated in which Sanjay was consistently shown senior to Samir. On each occasion, objections were invited, but Samir chose not to object;

g) Accordingly, on 25.03.2002, 03.11.2008, and 30.10.2012, since no objections were received, the tentative seniority lists were finalized showing Samir as junior to Sanjay; There was no reaction from Samir.

h) Thus, it is quite clear that for almost 11 years Samir did not react to or object to at least three finalized seniority lists in which he was shown as junior to Sanjay. This position continued for a further 9 years i.e. in all almost 20 years;

i) On 15.03.2019, yet another tentative seniority list of JEs (Civil) was circulated in which again, Sanjay was shown at Sr.No.3 and Samir at Sr.No.4. This time,

after almost 20 years, Samir filed a written objection dated 26.03.2019 objecting to the seniority list in which he was shown as junior to Sanjay;

j) Based on the aforesaid objection dated 26.03.2019 raised almost 20 years after the inter se seniority positions between Sanjay and Samir were finalized, the CEE by the impugned seniority list dated 13.05.2019 disturbed the settled seniority positions and showed Samir as senior to Sanjay. This change was brought about after almost two decades (about 20 years) without even minimum compliance with the principles of natural justice and fair play;

k) Sanjay addressed a representation dated 30.08.2019 protesting the issue of the impugned seniority list dated 13.05.2019. Since he received no response, Sanjay instituted the present petition on 14.10.2019;

l) This petition was taken up for consideration on 21.10.2019 on which date the respondent nos.1 and 2 appeared and waived service. Notice was issued to Samir returnable on 02.12.2019;

m) The Goa Public Service Commission (GPSC) has filed an affidavit explaining that the DPC to consider candidates for promotion to the post of AE (Civil) was held on 04.11.2019 since the GPSC was not made aware of the pending petition to which it had not been impleaded as a party. On 06.11.2019, the GPSC based on the impugned seniority list dated 13.05.2019, recommended Samir for promotion as AE (Civil);

n) The CEE, despite being party to this petition and having full knowledge about its pendency, proceeded to issue the impugned promotion order dated 15.11.2019, promoting Samir as AE (Civil), possibly to pre-empt this Court from granting interim relief in terms of prayer clause

(B) to the petition;

o) This petition was then amended by Sanjay to challenge inter alia the impugned promotion order dated 15.11.2019 since the same was based on the impugned seniority list dated 13.05.2019.

5. Thus, there is no dispute whatsoever that Samir was shown as junior to Sanjay for the first time in the confirmation order dated 21.12.1999, and until 26.03.2019, i.e. for almost 20 years, this position was never objected to by Samir. The records establish that the CEE, by completely ignoring the gross and inordinate delay on Samir's part in questioning the finalized seniority lists for almost 20 years, by the impugned seniority list dated 13.05.2019, proceeded to place Samir as senior to Sanjay. All this was done without even minimum compliance with the principles of natural justice and fair play qua Sanjay.

6. The petitioner has placed on record the notings, which give a clear insight as to the decision-making process leading to the issuance of the impugned seniority list by the CEE on 13.05.2019. Such notings, including their typed copies, are to be found on pages 77 to 82 of the paper book.

7. The notings refer to not only the objections filed by Samir but also to objections filed by Smt. Safira D'Souza and Smt. Manisha Rajadhyaksha on 04.04.2019 and 03.04.2019 respectively. Safira and Manisha got wind about Samir's objections and they had, therefore, filed their representations urging that no change be made to the seniority list that had stabilized for over the past 20 years.

8. The notings indicate that on 15.04.2019 it was decided that the matter be referred to the Personnel Department because Samir's objection was made after 22 years from the date of finalization of seniority positions. The noting dated 15.04.2019 reads as follows:-

"DDA As the representation/objection to seniority list from Shri Sameer Juwarkar has come after 22 years, we may like to refer the matter to Personnel dept before finalising the New Seniority list. Sd/-

15/04/2019"

9. Based on the aforesaid noting the file was sent to the Personnel Department. However, the Personnel Department returned the file to the Electricity Department citing that the proper procedure was not followed and no details were also furnished. This file reached the Electricity Department on 02.05.2019. The operative portion of the Personnel Department note reads as follows:-

" 7. The proposal may be submitted by following the procedure mentioned in this Departments circular no.22/55/85-PER(part)/344 dated 02/02/2016. Copy placed opposite in the file.

8. The file is returned to the Department for needful action.

Sd/- 2/5/2019"

10. The notings further bear out what happened on 10.05.2019. Same read as follows:-

" The matter is regarding finalizing seniority list of Junior Engineer (Civil) of Electricity Department.

The Junior Engineer (Civil) seniority file was forwarded to the Personnel Department to seek advice whether the seniority list can be changed after 22 years as on Junior Engineer Shri. Samir Juwarkar has failed to rectify the list in the preceding years.

However, in the first instance we may rectify the error made in the preparation of the final seniority list of the year 2012 of Junior Engineer (Civil) and consider the representation made by Samir Juwarkar and place him at serial no. 2 in the final seniority list in place of Manisha Rajadhyaksha.

DH Sd/- 10/5/2019

HC Sd/- 10/5/19

O/S Sd/- 10/5/19

DDA Sd/- 10/5/19

DA Sd/- 10/5/19

CEE Sd/- 10/5/19”

11. Based on the aforesaid, the CEE proceeded to issue the impugned seniority list dated 13.05.2019 placing Sanjay junior to Samir and thereby changing the seniority position that had prevailed for almost about 20 years. Mr. Raghuvir Keni, the CEE who changed the seniority after 20 years and hurriedly issued the impugned promotion order has, in his return, taken a bold but misconceived stand that Samir was not aware of his position in the seniority list. There is no material on record to support such a stand. Samir himself has not taken such a stand. Therefore it is quite unfortunate that the CEE should, on affidavit take such a false and far-fetched stand in a poor attempt to explain the delay of 20 years. This is certainly not expected of a high-ranking officer like CEE.

12. Even the notings dated 10.05.2019 give an insight into the high-handed and arbitrary manner in which the CEE, without furnishing details to the Personnel Department or awaiting the opinion of the said Department, rushed to change the seniority position that had prevailed for almost 20 years. The notings reflect neither any application of mind to the legal position that seniority should not be disturbed based on delayed objections nor to the provisions of the seniority rules like proviso to rule 5. The notings, quite summarily and without assigning any reasons, reject the weighty objections raised by Safira and Manisha, both on delay and merits. The notings do not even reflect any reason behind the action of the CEE in overturning the seniority position that had prevailed for almost 20 years. All these factors vitiate the decision-making process leading to the issue of the impugned seniority list.

13. In *Malcom Lawrence Cecil Dsouza vs. Union of India* – (1976) 1 SCC 599, the seniority list that was finalized in 1956 and reiterated in 1958 was challenged by instituting a writ petition in the year 1971. The Hon'ble Supreme Court held that such a challenge after so many years was not competent. The Court held that satisfactory service conditions postulate that there should be no sense of uncertainty amongst public servants because of stale claims made after a lapse of 14 or 15 years.

14. The Court held that anyone who feels aggrieved with an administrative decision affecting one's seniority should act with due diligence and promptitude and not sleep over the matter. The Court found that no satisfactory explanation was furnished by the petitioner and no cogent ground was shown as to why the petitioner became quiescent and took no diligent steps to obtain redress. The Court further held that although the security of service cannot be used as a shield against administrative action for lapses of a public servant, by and large one of the essential requirements of contentment and efficiency in public services

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

15. In *K. R. Mudgal vs. R. P. Singh* – (1986) 4 SCC 531, the Hon'ble Supreme Court was concerned with a case where the officers were put to the necessity of defending their appointments and seniority positions nearly after three decades. This was a case where the seniority positions were challenged after nearly eighteen years. The Court held that this kind of fruitless and harmful litigation must be discouraged. The Court held that satisfactory service conditions postulate that there should be no sense of uncertainty amongst the government servants created by the writ petitions filed after several years. Anyone who feels aggrieved by the seniority assigned to him must approach the court as early as possible as otherwise in addition to the creation of a sense of insecurity in the minds of the government servants there would also be administrative complications and difficulties.

16. The Court also held that the High Court was wrong in rejecting the preliminary objections raised on behalf of the respondents in the writ petition on the ground of laches. The Court referred to its earlier decision in *R. S. Makashi vs. I. M. Menon* – AIR 1982 SC 101 where again the Court had held that the High Court was wrong in overruling the preliminary objections based on delay and laches of almost eight years in challenging the finalized seniority lists.

17. In *Shiba Shankar Mohapatra & Ors. vs. State of Orissa & Ors.* - (2010) 12 SCC 471, the Hon'ble Supreme Court reviewed several decisions on the aspect of delay and laches in challenging the finalized seniority lists and held that the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained.

18. The Court also observed that in *K. R. Mudgal* (supra), it was laid down, in crystal clear words that a seniority list which remains in existence for three to four years unchallenged, should not be disturbed. Thus, three to four years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing a satisfactory explanation. The Court finally held that the Tribunal ought to have dismissed the case of *Parshuram Sahu* only on the ground of delay and laches.

19. In *Meghana vs. Maharashtra Legislature Secretariat & Ors.* - 2019 (5) Bom.

C.R. 678, the Division Bench of this Court held that the respondent Board committed a serious error in entertaining a representation and disturbing the settled seniority position after a considerable delay of almost fifteen years. The Court noted that in the interregnum several tentative and final seniority lists had been issued and therefore it was quite impossible to believe the explanation that Bhole was unaware of the so-called irregularities in settling the seniority position or during the selection process. The Court, by reference to *Malcom Dsouza (supra)*, *K. R. Mudgal (supra)*, and *Shiba Shankar Mohapatra (supra)* held that the Board could not have ignored the legal position and entertained the representation of Bhole which was grossly belated and unexplained. In this case, the Court not only set aside the altered seniority list but also the promotion order based on the principle of merit cum seniority awarded to Bhole.

20. Mr. Usgaonkar, learned counsel for Samir however defended the action of the CEE and consequently the impugned seniority list and the impugned promotion order. He submitted that the so-called delay in this matter was an entirely irrelevant factor because there was a glaring error in all the seniority lists circulated since 2002. He submitted that there could be no dispute about Samir being appointed as JE (Civil) on 10.03.1997 and Sanjay on 31.03.1997. He submits that for this basic reason, Sanjay could never have been placed senior to Samir in the seniority lists. He referred to a seniority list of 1998 where again Sanjay was shown senior to Samir and based on this submitted that the error could not be justified based on the Proviso to Rule 5 of the Seniority Rules. He submitted that in 1998, neither Sanjay nor Samir were confirmed as JE (Civil) and therefore the Proviso to Rule 5 of the Seniority Rules did not even apply. He submitted that such glaring and obvious errors can be corrected at any time and the issue of the so-called delay is irrelevant.

21. Mr. Usgaonkar also submitted that the above rulings relied upon by Mr. Diniz are distinguishable because in each of such rulings the Court first held that the alteration of seniority was wrong on merits and only thereafter made some observations on the aspect of delay and laches. He submitted that no parallel rights had been created at least in Sanjay and therefore this was not a case of laches. He submitted that mere physical running of time is not laches. He relied on *R. M. Ramual vs. State of Himachal Pradesh & Ors. - (1989) 1 SCC 285* and *Pushpanjali Subodha Shenvi vs. Nagrik Seva Mandal & Ors. - 2017 (1) Bom. C.R. 346* in support of his submissions.

22. Mr. Usgaonkar submitted that the Proviso to Rule 5 of the Seniority Rules is not attracted to a case where the officers are appointed on different dates and by different appointment orders. He submitted that the CEE had only corrected the patent and obvious error that had crept into the seniority positions and not the period of limitation or for that matter, no principle of delay and laches would apply to such a situation. For all these reasons, Mr. Usgaonkar submitted that this petition may be dismissed.

23. To the query from the Court as to whether Samir was claiming that he was

unaware of the several tentative and final seniority lists circulated in the department from at least 2002 onwards, Mr. Usgaonkar made it clear that this was not so. He pointed out that this was not the case set out by Samir in his representation dated 26.03.2019 nor was this the case pleaded by Samir, in the return filed by him in this petition. He however maintained that in the peculiar facts of the present case the issue of any alleged delay or laches was quite irrelevant.

24. Upon due consideration of the submissions of Mr. Usgaonkar, we find ourselves unable to agree with the same. As noted earlier, this is a peculiar case where the material on record overwhelmingly establishes that the issue of seniority of JE (Civil) was settled at least since 2002. There were at least three tentative, followed by final seniority lists issued indicating Sanjay as senior to Samir. All these lists were duly circulated in the department and therefore, quite correctly, even Samir has not claimed that he was unaware of the settled seniority position for over two decades. Only the CEE, to justify his patent illegality has stated falsely on affidavit that Samir was unaware when this was not even the case set out by Samir at any stage.

25. In the above decisions relied upon by Mr. Diniz, the Hon'ble Supreme Court has held that no challenges should be entertained to settled seniority lists, where such challenges are raised after about three to four years. Simply because in one or two matters, the Court also held that the alteration of seniority position was illegal on merits, it does not follow that the above rulings have not laid down a principle that challenges to settled seniority positions should not be entertained after three to four years, unless some good explanation is offered to explain such delay. The Hon'ble Supreme Court has also given reasons why such a principle must be adopted in service jurisprudence.

Further, as was pointed out by Mr. Diniz, in some of the rulings relied upon by him, the challenges were rejected solely on the grounds of delay and laches without adverting to the merits.

26. Although we are prima facie satisfied that the seniority, determined way back in the year 2002 and thereafter reiterated in 2008 and 2012, was based on the Proviso to Rule 5 of the Seniority Rules, there is no reason to dilate on this issue because we are quite satisfied that the representation made by Samir on 26.03.2019 i.e. almost 20-22 years after the finalization of the seniority positions was barred by delay and laches. The CEE's action was contrary to the law laid down by the Hon'ble Supreme Court as also this Court in the rulings referred to above as also several other rulings on this subject.

27. This is also not a case where no prejudice was caused to other JEs in the cadre including Sanjay. The rulings referred to above, in terms provide the prejudice that would be inherent on account of insecurity if the challenges were permitted to settled seniority positions after three to four years. Besides in this case, based on the impugned seniority list, Sanjay was possibly deprived of

promotion to the post of AE (Civil) that he legitimately expected after being shown as senior to Samir over the last 20 years.

28. Having regard to the above facts and circumstances, the decisions relied upon by Mr. Usgaokar will not apply in this case. Even the said decisions do not hold that delay, and laches of almost 20 years will not bar a challenge to a settled seniority position. Besides, in the said decisions, an explanation was offered for the delay that was found to be acceptable. Samir has not explained the inordinate delay of over 20 years either in his representation or in the returns. All that he contends is that the delay is an irrelevant factor in such cases. For all these reasons, the rulings in Ramual and Pushpanjali relied on by Mr. Usgaokar are distinguishable.

29. The impugned promotion order dated 15.11.2019 was issued by the CEE despite being aware of the pendency of the present petition and the fact that Sanjay had applied for interim relief to restrain the respondents from giving effect to the impugned seniority list and making promotions based thereon. The GPSC explanation that it was not made aware of the pending petition or the fact that seniority had been altered after

20 years can be accepted. However, there was no justification for the CEE to act in this manner and virtually render the interim relief applied by Sanjay infructuous, even before the same could be considered by this Court.

30. The impugned promotion order is based on the impugned seniority list. Even if we proceed on the basis that the promotion was based on merit cum seniority principle, the seniority belatedly and illegally accorded to Samir has played a significant role in his promotion. In similar circumstances, the Division Bench of this Court in Meghana (supra) not only set aside the impugned seniority list but also the promotion orders. The same course will have to be adopted in this case, as well.

31. For all the aforesaid reasons we dispose of this petition by making the following order:-

a) The impugned seniority list dated 13.05.2019 is hereby set aside and the position that prevailed immediately prior thereto is hereby restored. This means that Sanjay will have to be shown as senior to Samir;

b) The impugned promotion order dated 15.11.2019 by which Samir was promoted to the post of AE (Civil) is set aside. However, it is made clear that Samir should not be required to refund the financial benefits that he may have obtained between 06.11.2019 and this date but Samir shall now stand forthwith reverted to the post of JE (Civil) and a formal order to this effect will have to be issued within seven days from today;

c) Respondents no.1, 2, and 4 are directed to convene and hold the DPC to fill up the post of AE (Civil) as expeditiously as possible and in any case within six weeks from today. The DPC as well as the Respondents 1 and 2 should consider

whether the promotee should now be given a deemed date and notional benefits from 06.11.2019. However, there will be no question of grant of any actual financial benefits w.e.f. 06.11.2019;

d) Rule is made absolute in the aforesaid terms. There shall be no order for costs.

32. All parties to act on an authenticated copy of this judgment and order.