



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 07.03.2024*
Judgment Pronounced on: 16.04.2024

+ **W.P.(C) 3425/2023 & CM Appls.12001/2024, 12006/2024, 13234/2023, 50734/2023 & 54451/2023**

AGNI DEO PRASAD AND ORS. Petitioners

Through: Mr. Siddharth Batra, Ms. Archana Yadav, Ms. Shivani Chawla, Mr. Chinmay Dubey, Mr. Rhythm Katyal and Mr. Pratyush Arora, Adv.

Versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Vineet Dhanda, CGSC with Ms. Gurleen Kaur and Mr. Archit Aggarwal, Adv. along with Mr. Mohamed Hanif, AIG, RPF, Inspector Sikander Prasad, Inspector A. R. Lone, Sub-Inspector Satyabir Singh and Constable Milan Singh Mr. Sanjib Kumar Mohanty, SPG with Mr. Subesh Kumar Sahoo and Ms. Anushka Jakhodia, Adv.

+ **W.P.(C) 11825/2023 & CM APPL. 46211/2023**

YOGINDER SINGHPetitioner

Through: Mr. Siddharth Batra, Ms. Archana Yadav, Ms. Shivani Chawla, Mr. Chinmay Dubey, Mr. Rhythm Katyal and Mr. Pratyush Arora, Adv.



Versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Vineet Dhanda, CGSC with Ms. Gurleen Kaur and Mr. Archit Aggarwal, Advs. along with Mr. Mohamed Hanif, AIG, RPF, Inspector Sikander Prasad, Inspector A. R. Lone, Sub-Inspector Satyabir Singh and Constable Milan Singh and Mr. Manoj Yadav, DG/RPF. Mr. Abhishek Khanna, Govt. Pleader. Mr. Nitinjya Chaudhry, Sr. Panel Counsel with Mr. Rahul Mourya, Adv. for UOI

+ **W.P.(C) 5932/2023 & CM APPL. 23275/2023**

SHAMNATH CA AND ANR

..... Petitioners

Through: Mr. Siddharth Batra, Ms. Archana Yadav, Ms. Shivani Chawla, Mr. Chinmay Dubey, Mr. Rhythm Katyal and Mr. Pratyush Arora, Advs.

Versus

UNION OF INDIA AND ORS

.... Respondents

Through: Mr. Vineet Dhanda, CGSC with Ms. Gurleen Kaur and Mr. Archit Aggarwal, Advs. along with Mr. Mohamed Hanif, AIG, RPF, Inspector Sikander Prasad, Inspector A. R. Lone, Sub-Inspector Satyabir Singh and Constable Milan Singh Mr. Vijay



Joshi, Sr. Panel Counsel with Mr.
Mohit Joshi, Advs. for UOI

+ **W.P.(C) 8227/2023 & CM APPL. 31572/2023**

**BIJENDER SINGH SHEKHAWAT (ASC ON ADHOC)
& ANR.**

..... Petitioners

Through: Mr. Siddharth Batra, Ms. Archana
Yadav, Ms. Shivani Chawla, Mr.
Chinmay Dubey, Mr. Rhythm
Katyral and Mr. Pratyush Arora,
Advs.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Vineet Dhanda, CGSC with
Ms. Mr. Vineet Dhanda, CGSC
with Ms. Gurleen Kaur and Mr.
Archit Aggarwal, Advs. along with
Mr. Mohamed Hanif, AIG, RPF,
Inspector Sikander Prasad,
Inspector A. R. Lone, Sub-
Inspector Satyabir Singh and
Constable Milan Singh Mr.
Subhash Tanwar, CGSC with Mr.
Sandeep Mishra and Mr. Ashish
Choudhary, Advs. for UOI

+ **W.P.(C) 9439/2023 & CM APPL. 36031/2023**

SURENDRA NATH OJHA (CO ON ADHOC) Petitioner

Through: Mr. Siddharth Batra, Ms. Archana
Yadav, Ms. Shivani Chawla, Mr.
Chinmay Dubey, Mr. Rhythm
Katyral and Mr. Pratyush Arora,
Advs.



Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Vineet Dhanda, CGSC with Ms. Gurleen Kaur and Mr. Archit Aggarwal, Advs. along with Mr. Mohamed Hanif, AIG, RPF, Inspector Sikander Prasad, Inspector A. R. Lone, Sub-Inspector Satyabir Singh and Constable Milan Singh Mr. Abhishek Khanna, G.P.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

SAURABH BANERJEE, J.

1. We state at the very outset, that since we find that all five of the present writ petitions involve common facts and common points of law and moreover, since each of the petitioners therein are similarly placed, therefore, we deem it appropriate to dispose of all five of the present petitions vide this common judgment.

2. Before proceeding further, for effectively adjudicating the present petitions as also for the sake of clarity, herein below is a delineation of the position of the petitioners involved in each of the five petitions *vis-à-vis* their date of joining Railway Protection Force (hereinafter referred to as '**RPF**'), their date of initial posting alongwith the details of that posting either in the Railway Protection Special Force (hereinafter referred to as



‘RPSF’) or to any of the Zonal Railways (hereinafter referred to as ‘ZR’) and lastly, their date of posting as an Inspector:

W.P.(C) 3425-2023

PETITIONERS	DATE OF JOINING RPF	DATE OF INITIAL POSTING	DATE OF PROMOTION AS INSPECTOR
<i>Agni Deo Prasad</i>	07.03.1992	10.05.1992 (RPSF)	07.01.2002
<i>Ajay Kumar</i>	06.10.1991	10.05.1992 (RPSF)	07.01.2002
<i>Ajay Kumar Rai</i>	06.10.1991	10.05.1992 (ZR)	07.01.2002

W.P.(C) 11825-2023

PETITIONER	DATE OF JOINING RPF	DATE OF INITIAL POSTING	DATE OF PROMOTION AS INSPECTOR
<i>YOGINDER SINGH</i>	10.05.1992	05.10.1992 (ZR)	11.08.2000

W.P.(C) 5932-2023

PETITIONERS	DATE OF JOINING RPF	DATE OF INITIAL POSTING	DATE OF PROMOTION AS INSPECTOR
<i>SHAMNATH CA</i>	10.05.1992	05.10.1992 (ZR)	01.04.2005
<i>VISHOK GUPTA</i>	27.06.1990	27.08.1990 (ZR)	08.04.2004



W.P.(C) 8227-2023

<i>PETITIONERS</i>	<i>DATE OF JOINING RPF</i>	<i>DATE OF INITIAL POSTING</i>	<i>DATE OF PROMOTION AS INSPECTOR</i>
<i>BIJINDER SINGH SHEKHAWAT</i>	<i>10.05.1992</i>	<i>10.05.1992 (RPSF)</i>	<i>12.04.2001</i>
<i>MAHESH CHAND SAINI</i>	<i>16.01.1997</i>	<i>16.01.1997 (ZR)</i>	<i>01.07.2004</i>

W.P.(C) 9439-2023

<i>PETITIONER</i>	<i>DATE OF JOINING RPF</i>	<i>DATE OF INITIAL POSTING</i>	<i>DATE OF PROMOTION AS INSPECTOR</i>
<i>SURENDRA NATH OJHA</i>	<i>27.12.1989</i>	<i>---,---,--- (ZR)</i>	<i>19.08.1997</i>

3. The factual position emerging from the pleadings before us entails that the petitioners were respectively enrolled in the RPF from time to time. Subsequently, they were either posted in the RPSF or to any of the ZR's and were eventually promoted as Inspectors on various dates. The details qua all of them have been detailed hereinabove in the preceding paragraph.

4. Thereafter, initially on 20.03.2006, a combined seniority list of Inspectors/RPF promoted prior to 01.07.2004 was prepared for the purpose of promotion to the rank of Assistant Security Commissioners (hereinafter referred to as 'ASC'), wherein the petitioners were placed at appropriate serial numbers. However, later on, another seniority list



concerning the Inspectors who were promoted prior to 01.07.2004 and were either working as Inspectors or as ad-hoc ASC as on 01.01.2013 was issued on 07.04.2014. It is here that the petitioners were placed at different serial numbers as compared to the earlier list dated 20.03.2006.

5. Apropos thereto, the DIG/Establishment, Railway Board i.e. the respondent no. 3 herein issued the impugned letter no.2022/Sec(E)/SR-3/17 dated 03.11.2022 as also the impugned provisional combined seniority dated 13.02.2023, wherein the seniority of the petitioners was sought to be fixed as per *Rule 99.2¹* of the Railway Protection Force Rules, 1987 (hereinafter referred to as '**RPF Rules**').

6. Aggrieved with the aforesaid actions of the respondents, not only the petitioners made several representations to the respondents but also filed several RTI applications to the concerned authorities including the respondents herein. Receiving no satisfactory response thereto, the petitioners then filed the present five writ petitions under *Article 226* of The Constitution of India seeking, broadly, the reliefs enumerated herein below:

- a) *Issue a writ of Certiorari or any other appropriate writ, order or direction for quashing the letter dated 03.11.2022 issued by Respondent No.3, as well as the consequential provisional combined seniority list dated 13.02.2023 circulated by Respondent No. 3 by virtue of which Respondents are illegally attempting to unsettle the seniority of the Petitioners; and/or*
- b) *Issue a writ of mandamus or any other appropriate writ, order, or direction directing the Respondents to fix the seniority of the*

¹ 99.2 *Transfer on own request or on mutual exchange : Seniority of an enrolled member of the Force transferred on his own request or on mutual exchange from one zonal railway to another or to the Railway Protection Special Force and vice versa shall be fixed below that of all existing confirmed and officiating enrolled member of the Force in the relevant rank of that railway or Railway Protection Special Force irrespective of the date of confirmation or length of officiating service of the transferred member of the Force.*



Petitioners in accordance with Rule 99.2A of the RPF Rules 1987 and combined seniority list dated 07.04.2014.

SUBMISSIONS MADE BY PETITIONERS:

7. Learned counsel for the petitioners submitted that *Rule 99.2* of the RPF Rules is not applicable to the petitioners herein as their seniority is determined on an “*All India Basis*” and as such, *Rule 99.2A*² of the RPF Rules ought to be applied while determining their seniority. He submitted that *Rule 99.2* of the RPF Rules holds no relevance in the case of the petitioners, more so, as it primarily pertains to transfers from one ZR to another and separate zones within the RPF and maintain distinct seniority lists for personnel ranked below the post of Inspector.

8. Learned counsel then submitted that the respondents own approach in other cases has been to preserve the seniority of the personnel promoted to the post of Inspector irrespective of any subsequent inter-zonal transfers, even if it is on their own request or due to assignment by the concerned authorities. He, thus, placing reliance upon a letter dated 06.10.2017 issued by the Director/RPF, Railway Board, Ministry of Railways, Government of India submitted that the petitioners have been grossly discriminated against by the respondents by deviating from their own well settled principles.

9. Lastly, learned counsel placed reliance upon the judgments passed by the Hon’ble Supreme Court of India in *Union of India and Others vs Hindustan Development Corporation and Others* (1993) 3 SCC 499 and

² 99.2A There shall be no change in the Seniority of Sub-Inspectors or Inspectors transferred on mutual exchange or on own request from one zonal railway to another zonal railway as these ranks fall under centralised seniority.



Ram Pravesh Singh and Others vs State of Bihar and Others (2006) 8 SCC 381, wherein the doctrine of legitimate expectation has been defined to broadly mean that a person has the right to a fair hearing or a fair procedure when a public authority makes a decision affecting their interests.

SUBMISSIONS MADE BY RESPONDENTS:

10. Per Contra, learned counsel for the respondents submitted that the transfers of the petitioners occurred between the years 2004 and 2010 and since at that time, *Rule 99.2* of the RPF Rules was in force, therefore, the same had been applied while preparing the seniority list of the petitioners. He submitted that applying *Rule 99.2A* of the RPF Rules while preparing the seniority list of the petitioners, as prayed for by the petitioners, would result in giving a retrospective effect to *Rule 99.2A* since the same was introduced in the RPF Rules only subsequently on 21.07.2021.

11. Learned counsel then submitted that since the petitioners had been “*transferred on their own request*”, therefore, as per *Rule 99.2* of the RPF Rules, they were appropriately put at the bottom of the combined seniority list. He further submitted that vide the impugned actions/ orders, the respondents are only trying to rectify the legal wrong done by them by implementing *para no.17* of the Standing Order No.70 issued vide letter dated 09.08.2006 since the same was contrary to *Rule 99.2* of the RPF Rules. To this effect, he placed reliance upon the judgment dated 31.01.2019 passed by a Co-ordinate Bench of this Court in W.P.(C) 11293/2016 titled ***Gurpratap Singh and Ors. vs Union of India and Ors.*** and upon the judgment dated 17.12.2020 passed by another Co-ordinate



Bench of this Court in W.P.(C) 920/2020 titled *Ashok Singh Bhadauria and Ors. vs The Union of India and Ors.*, wherein, as per him, appropriate directions were issued to the respondents to implement *Rule 99.2* of the RPF Rules in earnest. To reinforce this averment, he further placed reliance upon the judgment dated 04.02.2024 passed by the Hon'ble Supreme Court of India in Criminal Appeal No.451/2019 titled *Sita Soren vs Union of India* wherein it was held that there is a grave danger of this Court allowing an error to be perpetuated if the decision were not reconsidered.

12. Learned counsel lastly submitted that if the seniority of the petitioners is prepared in accordance with what has been prayed for in the present petitions, the same would seriously jeopardise the administration of the RPF/ RPSF since at least 40 Officers would be affected as a result of the same.

REJOINDER SUBMISSIONS MADE BY PETITIONERS:

13. In rejoinder, learned counsel for the petitioners primarily submitted that the reliance placed by the respondents upon *Gurpratap Singh and Ors. (supra)* is bad in law and is indeed a clear violation of the judgment passed in *Ashok Singh Bhadauria and Ors. (supra)* wherein it was held that the judgment in *Gurpratap Singh and Ors. (supra)* was a judgment *in personam* and not a judgment *in rem* and thus the respondents have erred in fixing the seniority of the petitioners on fallacious grounds.

ANALYSIS AND REASONINGS:

14. After having heard the learned counsel for the parties as also perusing the complete paperbook of all the aforesaid petitions coupled



with the various judgments cited on the proposition(s) involved, in our considered opinion, the basic/ moot point for consideration is whether the seniority of the petitioners in the seniority list can be disturbed by the respondents at this belated stage when a lot of time has already elapsed and that too after they were given due promotions by the respondents on their own accord. In our opinion, while considering the aforesaid proposition laid out by us, the applicability of *Rule 99.2* or *Rule 99.2A* of the RPF Rules to the seniority list(s) as prepared by the respondents is immaterial.

15. Succinctly put, based on the aforesaid factual matrix involved and the position of law as it stands now, we, once again, reiterate that since the issue involved in the present petitions are pertaining to displacing/disturbing the petitioners from their long standing position(s) in the seniority lists in the wake of the two impugned actions/orders, we are therefore, only to look into the fact as to whether the said impugned actions/orders can be allowed to sustain/continue as it is. Accordingly, under the afore-stated facts and circumstances and for the reasons stated herein below, in our considered opinion, while deciding the question of sustenance/continuance of the aforesaid impugned actions/orders, the applicability of *Rule 99.2* or *Rule 99.2A* of the RPF Rules to the seniority list(s) as prepared by the respondents is not of any relevance or significance.

16. The aforesaid facts, as entailed hereinabove, reveal that, *admittedly*, it is the respondents who had promoted the petitioners on their own accord from time to time and also that each one of the petitioners were continuing in their respective roles till the passing of the impugned



actions/ orders by the respondents. In fact, we, vide our order dated 20.03.2023 directed the respondents not to publish the final seniority list pursuant to the provisional combined seniority list of Inspectors dated 13.02.2023 issued by the DIG/ Establishment, Railway Board.

17. In our opinion, it is for this reason that it is also not the case of the respondents that the petitioners were unqualified for the posts that they were holding or they were non-performing personnel or that since their respective promotions, they have given any occasion to anyone for making any kind of complaints/greivances against them or that they have committed any wrong or that there are any allegations of *mala fide*, bias or otherwise against them or that their continuing in service or their posts has caused/will cause any kind of prejudice to either of the respondents or any other serving personnel with the RPF/ RPSF.

18. In any event, the respondents have neither challenged the said promotions of the petitioners nor have taken any step(s) qua any of them since the time of their respective promotions as they have been continuing/discharging their duties as such. Therefore, the issuance of the two impugned actions/orders and that too belatedly without any plausible basis or reason casts a suspicion upon the same.

19. Under such circumstances, it is highly implausible for the respondents to make any effort for turning the clock back by unwinding it. Moreover, the respondents cannot be allowed to give a complete go-bye to the past especially when it comes to the unhindered and uncontested services rendered by the petitioners while they have been validly discharging their duties since assuming their respective post on



promotion. As such, the petitioners cannot be relegated back in the past to once again start *de-novo* from the beginning.

20. It is, thus, too late for the respondents to withdraw/recall/amend or otherwise touch the existing seniority list by issuing the two impugned actions/orders. Furthermore, even though the redrawing of the seniority list might be a welcome step from the respondents, however, the said action of the respondents cannot be allowed to operate in as much as it is at the cost of the petitioners who have been previously given the benefit of appropriate seniority by the very same respondents. Since pleasure to one cannot be at the cost of pain to others, therefore, while looking at the two impugned actions/orders issued by the respondents, we also have to take into consideration the larger public interest involved and the purpose behind such steps taken by the respondents.

21. Furthermore, a perusal of the record before us reveals that the respondents were, in fact, themselves transferring Inspectors without affecting their seniority. The same is evident from the order dated 17.06.2022 passed by the Dy. Director/Sec(E), Railway Board, wherein, while effectuating the transfers of some Inspectors, their seniority was not touched and it was stated as under:

“As per practice in vogue once a Sub-Inspector is promoted to the rank of Inspector and his name included in combined seniority list of Inspector maintained in Security Directorate, his seniority is not affected on account of his inter-zonal transfer on own request on bottom seniority etc.”

22. Since we find no basis or reason, substantive or otherwise, for the respondents to come out with the two impugned actions/orders, therefore, we have no hesitation in holding that the sustenance/operation of the two



impugned actions/orders would cause a grave prejudice to the petitioners as it disturbs the position earned by the petitioners in the long standing seniority list. Thus, the two impugned actions/orders deserve to be set-aside.

23. Another relevant factor for consideration by this Court is that since the petitioners have been previously given the benefit of seniority/promotions by the very same respondents, therefore, the petitioners have a right of *legitimate expectation*, which, in our opinion, would be violated if the two impugned actions/orders are allowed to sustain/operate. It is trite law that an individual can be said to have a “*legitimate expectation*” if any representation or promise is made by an authority either expressly or implicitly, or if the regular and consistent past practice of the authority gives room for such an expectation in the normal course of events.

24. Reliance in this regard is also placed upon ***Union of India and Others vs Hindustan Development Corporation and Others*** (1993) 3 SCC 499 wherein the Hon’ble Supreme Court has held as under:

“28. Time is a three-fold present: the present as we experience it, the past as a present memory and future as a present expectation. For legal purposes, the expectation can not be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves can not amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation can not amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense.”



25. Reliance is further placed upon ***Ram Pravesh Singh and Others vs State of Bihar and Others*** (2006) 8 SCC 381 wherein the Hon'ble Supreme Court has held as under :

“15. What is legitimate expectation? Obviously, it is not a legal right. It is an expectation of a benefit, relief or remedy, that may ordinarily flow from a promise or established practice. The term 'established practice' refers to a regular, consistent predictable and certain conduct, process or activity of the decision-making authority. The expectation should be legitimate, that is, reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. Not being a right, it is not enforceable as such. It is a concept fashioned by courts, for judicial review of administrative action. It is procedural in character based on the requirement of a higher degree of fairness in administrative action, as a consequence of the promise made, or practice established. In short, a person can be said to have a 'legitimate expectation' of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or if the regular and consistent past practice of the authority gives room for such expectation in the normal course. As a ground for relief, the efficacy of the doctrine is rather weak as its slot is just above 'fairness in action' but far below 'promissory estoppel'. It may only entitle an expectant : (a) to an opportunity to show cause before the expectation is dashed; or (b) to an explanation as to the cause for denial. In appropriate cases, courts may grant a direction requiring the Authority to follow the promised procedure or established practice. A legitimate expectation, even when made out, does not always entitle the expectant to a relief. Public interest, change in policy, conduct of the expectant or any other valid or bonafide reason given by the decision-maker, may be sufficient to negative the 'legitimate expectation'. The doctrine of legitimate expectation based on established practice (as contrasted from legitimate expectation based on a promise), can be invoked only by someone who has dealings or transactions or negotiations with an authority, on which such established practice has a bearing, or by someone who has a recognized legal relationship with the authority. A total stranger unconnected with the authority or a person who had no previous dealings with the authority and who has not entered into any transaction or negotiations with the authority, cannot invoke the



doctrine of legitimate expectation, merely on the ground that the authority has a general obligation to act fairly.”

26. Furthermore, the impugned actions/orders shall also unsettle and is likely to shake up the now long standing seniority list, not only of the petitioners but also of various other similarly situated personals/officers in the RPF/RPSF, which is surely likely to have far reaching and cascading effects/implications leading to unwarranted litigations and wastage of the public exchequer.

27. Additionally, as on date, there is unexplainable delay on the part of respondents in issuing the two impugned actions/orders. As such, both the impugned actions/orders are hit by gross delays and latches and show some negligence on the part of the respondents as the said orders have been issued after such a prolonged period of time that too without any justification, cause or explanation. In fact, there is no plausible explanation given by the learned counsel for the respondents as to why the respondents chose to issue the said two impugned actions/ orders. For this, we find able support in ***Shiba Shankar Mohapatra and Others vs State of Orissa and Others*** (2010) 12 SCC 471 wherein the Hon’ble Supreme Court has held as under:

“23. In B.S. Bajwa v. State of Punjab [(1998) 2 SCC 523 : 1998 SCC (L&S) 611] this Court while deciding the similar issue reiterated the same view, observing as under: (SCC p. 526, para 7)

“7. ... It is well settled that in service matters the question of seniority should not be reopened 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. This alone was sufficient to decline interference under Article 226 and to reject the writ petition.”



28. In *K.A. Abdul Majeed v. State of Kerala* [(2001) 6 SCC 292 : 2000 SCC (L&S) 955] this Court held that seniority assigned to any employee could not be challenged after a lapse of seven years on the ground that his initial appointment had been irregular, though even on merit it was found that seniority of the petitioner therein had correctly been fixed.

30. Thus, in view of the above, 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. In *K.R. Mudgal*, this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 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 satisfactory explanation.”

28. It is, thus, based on the aforesaid analysis and discussion, we find that the respondents by issuing the two impugned actions/orders, that too belatedly after the lapse of a considerable period of time, have committed a grave error without any cogent reason or explanation. Therefore, interference, at this stage, is required to set-aside both the impugned actions/orders.

29. Without doubt, it is a settled position of law that we, as a Court of law exercising jurisdiction under *Article 226* of The Constitution of India, are not to unsettle or alter the existing list of promotion and/or seniority belatedly as is the case in the present petitions, unless and until there is something so grave or there is some gross error apparent on the face of the record or is against the settled position of law. We find able support in *H.S. Vankani and Others vs State of Gujarat and Others* (2010) 4 SCC 301 wherein the Hon’ble Supreme Court has held as under:



“39. Courts are repeating the ratio that the seniority once settled, shall not be unsettled but the men in power often violate that ratio for extraneous reasons, which, at times calls for departmental action. Legal principles have been reiterated by this Court in *Union of India v. S.K. Goel* [(2007) 14 SCC 641 : (2009) 1 SCC (L&S) 873] , *T.R. Kapoor v. State of Haryana* [(1989) 4 SCC 71 : 1989 SCC (L&S) 636 : (1989) 11 ATC 844] and *Bimlesh Tanwar v. State of Haryana* [(2003) 5 SCC 604 : 2003 SCC (L&S) 737]”

30. In fact, by virtue of the two impugned actions/orders, today the respondents are trying to wrongly give retrospective seniority to the other similarly situated personnel like the petitioners herein by putting them ahead of such petitioners in the already existing seniority list as on date, which, as per the settled position of law, is not permissible.

31. It is, thus, though the judgments in *Gurpratap Singh and Ors.* (*supra*) and *Ashok Singh Bhadauria and Ors.* (*supra*) are dealing with the applicability of *Rule 99.2* or *Rule 99.2A* of the RPF Rules, however, considering the factual circumstances involved before us, they, according to us, have no direct bearing on the present petitions and are thus, of little assistance to the parties before us. Furthermore, in light of the factual matrix involved coupled with the aforesaid reasonings and analysis, the rest of the judgments cited by the learned counsel for the respondents are of no assistance and are thus, inapplicable for the purposes of adjudicating the present petitions.

CONCLUSIONS:

32. In view of the aforesaid detailed reasoning and analysis coupled with the factual matrix involved, we are of the opinion that the two impugned actions/orders can, neither factually nor legally, be allowed to sustain/operate. Resultantly, the said two impugned actions/orders i.e. the



letter dated 03.11.2022 issued by the respondent no.3, as well as the consequential provisional combined seniority list dated 13.02.2023 circulated by the respondent no.3 are set-aside.

33. Needless to state, the respondents shall be free to come out with a fresh list, if, as and when required, in accordance with law.

34. We once again make it clear that in the present petitions, since the respondents had themselves granted timely promotions/postings to the petitioners involved herein, therefore, the only point for consideration before us was qua the disturbance/changes in the seniority of the petitioners and whether the same is/was lawful or not. Thus, it is made clear that for the factual matrix involved and for the reasoning and analysis as discussed above, the issue qua the applicability/non-applicability of either *Rule 99.2* or *Rule 99.2A* of the RPF Rules is immaterial for the adjudication of the present petitions.

35. Accordingly, the present petitions are allowed in the above terms with no order as to costs.

36. A copy of this judgment be kept in all these petitions.

SAURABH BANERJEE, J.

V. KAMESWAR RAO, J.

APRIL 16, 2024/rr