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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

ON THE 24th OF JANUARY, 2024

WRIT PETITION No. 5795 of 2016

BETWEEN:-

SANTOSH KUMAR SHRIVASTAVA S/O SHRI BASANT KUMAR SHRIVASTAVA, AGED ABOUT 60 YEARS, OCCUPATION: WORKING AS SUPERVISOR (TESTING) OFFICE OF EXECUTIVE ENGINEER (TESTING DIVISION NO.1) M.P.POWER TRANSMISSION CO. LTD. JABALPUR R/O QTR. NO.E-1/132 KV SUB STATION VINOBA BHAVE KANCHGHAR JABALPUR DIST. JABALPUR (MADHYA PRADESH)

.....PETITIONER

(BY SHRI SANJAY K. AGRAWAL - ADVOCATE)

AND

- 1. MADHYA PRADESH POWER MANAGEMENT CO. LTD. THROUGH CHAIRMAN CUM MANAGING DIRECTOR SHAKTI BHAWAN RAMPUR JABALPUR DIST. JABALPUR (MADHYA PRADESH)**
- 2. M.P. POWER TRANSMISSION CO. LTD. THR. ITS MANAGING DIRECTOR, SHAKTI BHAWAN, RAMPUR JABALPUR (MADHYA PRADESH)**
- 3. CHIEF ENGINEER (CORPORATE AFFAIRS) M.P. POWER TRANSMISSION CO. LTD. RAMPUR JABALPUR, (MADHYA PRADESH)**
- 4. CHIEF ENGINEER, T AND C, M.P. POWER TRANSMISSION CO. LTD. RAMPUR JABALPUR, (MADHYA PRADESH)**
- 5. THE SUPERINTENDING ENGINEER (T AND C) M.P. POWER TRANSMISSION CO. LTD. DISTT. JABALPUR, M.P. (MADHYA PRADESH)**
- 6. THE EXECUTIVE ENGINEER (TESTING) DIVISION NO. 1, M.P. POWER TRANSMISSION CO. LTD. NAYAGAON, JABALPUR (MADHYA PRADESH)**

7. C.S. SHUKLA SR. SUB STATION SUPERVISOR, THR EXECUTIE ENGINEER, TESTING DIVISION NO. 2, (MADHYA PRADESH)
8. M.P. SHRIVASTAVA SR. SUB STATION SUPERVISOR THR. EXECUTIVE ENGINEER, TESTING DIVISION (MADHYA PRADESH)
9. SRINIVAS SHARMA SR. SUB STATION SUPERVISOR THR. EXECUTIVE ENGINEER, TESTING DIVISION (MADHYA PRADESH)
10. PRAKASH CHANDRA JOSHI SR.SUB STATION SUPERVISOR THROUGH EXECUTIVE ENGINEER 400 KV TESTING DIVISION (MADHYA PRADESH)

.....RESPONDENTS

(BY MS RITIKA CHOUHAN - ADVOCATE)

This petition coming on for admission this day, the court passed the following:

ORDER

This petition is filed by the petitioner being aggrieved of the order dated 20.01.2016, Annexure P-12, whereby the respondents in an illegal manner and without giving any proper justification rejected petitioner's representation for grant of proper placement in the seniority list of the post of Testing Supervisor.

Petitioner's contention is that he was appointed as Testing Assistant Grade-II vide order dated 20.09.1977. In the seniority list of Testing Assistant Grade -II his name was at serial No.318 whereas that of private respondents were at serial No.331 and below.

He was promoted as Testing Assistant Grade-I vide order dated 04.06.1988 and in the gradation list of Testing Assistant Grade-I, his name was at serial No.7 whereas that of private respondents were at serial No.21, 40 and 41.

On 19.10.2010, a DPC was convened to consider case of Testing

Assistant Grade-I for promotion to the post of Testing Supervisor. It was found that petitioner's ACRs were not available whereas ACRs of the private respondents were made available, as a result, they were given promotion vide order dated 23.10.2010. Copy of this order of promotion is enclosed as I.A.-2.

Review DPC was convened on 01.11.2010 and petitioner in view of the availability of the ACRs was given promotion to the post of Testing Supervisor on 04.11.2010 vide Annexure P-10.

Now, petitioner's contention is that he is entitled to have a march over the private respondents as he was senior to them all through and for a fortuitous circumstance of non-availability of the ACRs for which petitioner cannot be faulted with he could not be superseded and down graded in the seniority list of Testing Supervisor.

Ms. Ritika Chouhan, learned counsel for the respondents in her turn submits that a provisional gradation list of the post of Testing Supervisor was issued in the year 2012, objections were called, final list was published in 2014 and, therefore, claim of the petitioner stood rejected with publication of the final gradation list.

Reliance is placed on the judgment of Hon'ble Supreme Court in **P.S. Sadasivasswamy Vs. State of Tamil Nadu, (1975) 1 SCC 152**, wherein it is held that a person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of

persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters.

Reliance is also placed on the judgment of Hon'ble Supreme Court in the case of **Union of India and Others Vs. Chaman Rana, (2018) 5 SCC 798**, whereas in para 18, it is held that the cause of action first arose to the respondents on the date of initial supersession and again on the date when rejection of their representation was communicated to them, or within reasonable time thereafter.

In the light of this fact it is submitted that since supersession took place in 2010, petition filed in the year 2016 is barred by limitation.

After hearing learned counsel for the parties and going through the record. Judgment in case of **Chaman Rana (supra)** is not applicable. Present is not a case of supersession. Present is a case of computation of seniority and placement of a person who was declared to be fit for promotion in the review DPC. There is a distinction between supersession and inappropriate placement in the seniority list of the promoted post.

As far as judgment in case of **P.S. Sadasivaswamy (supra)** is concerned, that has no application to the facts of the case, inasmuch as, soon after promotion of the juniors, petitioner was promoted as is evident from the chronology of events that juniors were given promotion on 23.10.2010 whereas petitioner was given promotion on 04.11.2010.

Here the mood question is that what will be the seniority of a person who could not be considered by the DPC which was convened on 19.10.2010 due to nonavailability of the ACRs.

Rule 12 of Madhya Pradesh Civil Services (General, Conditions of Service) Rules, 1961 in terms of provisions contained in rule 12(1)(d) provides that "the seniority of a person, whose case was deferred by the Departmental Promotion Committee for lack of Annual Character Rolls or for any other reasons but subsequently found fit to be promoted from the date on which his junior was promoted, shall be counted from the date of promotion of his immediate junior in the select list or from the date on which he is found fit to be promoted by the Departmental Promotion Committee.

Thus, it is evident that in terms of Rule 12(1)(d), petitioner is entitled to compute his seniority on the post of Testing Supervisor w.e.f. from the date when his juniors were promoted and relative seniority is to be made in the feeder cadre.

This principle of maintenance of relative seniority is culdout from the ratio of law that the test of constitutionality which implies that the rules or administrative orders or administrative action must be based on some fair, just, and rational principle.

When there is a direct rule on this subject which could not be denied by learned counsel for the respondents having application to the service conditions of the petitioner and the private respondents, then in view of the presence of the direct rule, delay in challenging the position being not inordinate and a wasted right of the petitioner could not have been taken away by the respondents dehors the Rules specially the provisions contained in Rule 12(1)(d) of the Madhya Pradesh Civil Services (General, Conditions of Service) Rules 1961, petition deserves to be allowed and is hereby allowed.

It is directed that petitioner will be entitled to maintain his original seniority as was obtaining in the cadre of Assistant Grade-I on the promotional

post of Testing Supervisor with all consequential benefits being it financial or that of promotion/upgradation etc. as were given to the private respondents from time to time.

Petitioner will also be entitled to cost of the litigation which is quantified at Rs.10,000/- (Rupees Ten Thousand Only).

In above terms, this petition is allowed and disposed of.

MTK



**(VIVEK AGARWAL)
JUDGE**