



2026:CGHC:26195

AFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR****WPS No. 7379 of 2023****Order Reserved on 24.04.2026****Order Delivered on 29.06.2026**

1 - Smt. Chhaya Singh W/o Mr. Abhimanyu Singh Aged About 41 Years Presently Posted As Chief Judicial Magistrate, District Gariyaband (Civil District Raipur) Chhattisgarh.

**... Petitioner(s)****versus**

- 1 - Honble High Court Of Chhattisgarh Through Registrar General Bodri, Bilaspur.
- 2 - State Of Chhattisgarh Through Principal Secretary (Law), Mahanadi Bhavan, Atal Nagar, Raipur Chhattisgarh.
- 3 - The District And Session Judge, District Janjgir Champa Chhattisgarh
- 4 - Smt. Kiran Thawait Additional District And Sessions Judge, Pendra Road Chhattisgarh.
- 5 - Ashok Kumar Lal Vi Additional District And Sessions Judge, Bilaspur Chhattisgarh.
- 6 - Sumit Kapoor Iii Additional District And Sessions Judge, Bilaspur Chhattisgarh.
- 7 - Awadh Kishore Additional Registrar (Admn), High Court Of Chhattisgarh, Bilaspur

- 8** - Jitendra Kumar Singh Ii Additional District And Sessions Judge,  
Katghora Chhattisgarh.
- 9** - Shailesh Sharma Additional District And Session Judge (Ftc),  
Dantewara Chhattisgarh.
- 10** - Vikram Pratap Chandra Additional District And Sessions  
Judge, Ftsc (Pocso), Korba Chhattisgarh.
- 11** - Krishna Pal Singh Bhadauriya Deputy Secretary, Chhattisgarh  
Lok Ayog, Raipur Chhattisgarh.
- 12** - Sanjay Agrawal Additional District And Sessions Judge,  
Pratappur Chhattisgarh.
- 13** - Santanoo Kumar Deshlahre A.D.J. Of The Special Court For  
Trial Of Naxalite Cases, Dantewara Chhattisgarh.
- 14** - Avinash Kumar Tripathi X Additional District And Sessions  
Judge, Bilaspur Chhattisgarh.
- 15** - Vinay Kumar Pradhan Additional District And Sessions Judge,  
Baikunthpur Chhattisgarh.
- 16** - Abhishek Sharma Additional District And Sessions Judge  
(F.T.C.), Rajnandgaon Chhattisgarh.
- 17** - Agam Kumar Kashyap Ix Additional District And Sessions  
Judge, Raipur Chhattisgarh.
- 18** - Shrinivas Tiwari Additional District And Sessions Judge,  
Kawardha Chhattisgarh.
- 19** - Om Prakash Jaiswal V Additional District And Sessions Judge,  
Ambikapur Chhattisgarh.
- 20** - Jagmohan Shankar Patel Additional District And Sessions  
Judge, Ftsc (Pocso), Jagdalpur Chhattisgarh.
- 21** - Ganesh Ram Patel Additional District And Sessions Judge  
(F.T.C.), Durg Chhattisgarh.
- 22** - Smt. Monika Jaiswal II Additional District And Sessions Judge,  
Ambikapur Chhattisgarh.

- 23** - Santosh Kumar Mahobiya II Additional District And Sessions Judge, Bilaspur Chhattisgarh.
- 24** - Ku. Pushplata Markande IV Additional District And Sessions Judge, Bilaspur Chhattisgarh.
- 25** - Smt. Mona Chauhan Joint Registrar, Cg State Consumer Dispute Redressal Commission, Raipur Chhattisgarh
- 26** - Krishna Kumar Suryawanshi II Additional District And Sessions Judge, Korba Chhattisgarh.
- 27** - Ku. Vandana Verma Additional District And Sessions Judge, (F.T.C.), Jagdalpur Chhattisgarh.
- 28** - Santosh Thakur I Civil Judge Class-I And Chief Judicial Magistrate, Durg Chhattisgarh.
- 29** - Narendra Kumar I Civil Judge Class -I And Chief Judicial Magistrate, Ambikapur Chhattisgarh.
- 30** - Smt. Shyamwati Maravi I Civil Judge Class -I And Chief Judicial Magistrate, Balod Chhattisgarh.
- 31** - Smt. Sushma Lakra I Civil Judge Class -I And Chief Judicial Magistrate, Surajpur Chhattisgarh.
- 32** - Anil Prabhat Minj I Civil Judge Class -I And Chief Judicial Magistrate, Dhamtari Chhattisgarh.
- 33** - Deepak Kumar Koshley I Civil Judge Class-I And Chief Judicial Magistrate, Raigarh Chhattisgarh.
- 34** - Bhupendra Kumar Vasnikar I Civil Judge Class -I And Chief Judicial Magistrate, Kanker Chhattisgarh.
- 35** - Damarudhar Chouhan I Civil Judge Class-I And Chief Judicial Magistrate, Jashpur Chhattisgarh.

... Respondents

**(Cause-title taken from the Case Information System)**

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For Petitioner : Mr. T.K. Jha & Mr. Anumeh Shrivastava, Advocates  
For Respondents No. 1 to 3 : Mr. Ashish Surana, Advocate

For Respondents No. 4, 7, 8, 10, 16, 22, 29 & 30 : Mr. Abhishek Gupta, Advocate

For Respondents No. 5, 6, 11, 13, 14, 23, 24, 25 & 34 : Mr. Gourav Singhal, Advocate

For Respondent No. 9 : Mr. Aman Kesharwani, Advocate

For Respondent No. 19 : Mr. Raja Sharma & Ms. Aditi Parakh, Advocates

For Respondent No. 28 : Ms. Smriti Ekka, Advocate

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**Hon'ble Shri Justice Amitendra Kishore Prasad**

**CAV Order**

1. By way of the present petition, the petitioner has invoked the extraordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India challenging the action of the respondents in deferring her promotion from the post of Civil Judge Class-II (Junior Division) to Civil Judge Class-I (Senior Division) vide order dated 14.08.2014 and subsequently denying her restoration of original seniority despite her later promotion vide order dated 12.08.2016. The petitioner further seeks grant of consequential seniority and all attendant service benefits. The petitioner has also prayed for appropriate directions to the respondents to consider her case for further promotion to the post of District Judge (Entry Level) by restoring her rightful seniority in accordance with the applicable service rules.

2. Subject matter in brief is that the petitioner was initially appointed as Civil Judge Class-II (Junior Division) on 26.12.2008

and was posted at District Court, Durg. In terms of Rule 5(2) read with Schedule-II of the Rules of 2006, the petitioner had completed the requisite qualifying service of five years with unblemished Annual Confidential Reports and without any adverse remarks, thereby becoming entitled for consideration for promotion to the post of Civil Judge Class-I (Senior Division). However, vide promotion order dated 14.08.2014, the petitioner's case was kept in the category of deferred candidates, whereas her juniors were granted promotion. Aggrieved thereby, the petitioner submitted a representation dated 15.04.2015 seeking grant of promotion and consequential benefits, but neither the said representation was decided nor was any communication made regarding its outcome. Subsequently, the petitioner was promoted to the post of Civil Judge Class-I (Senior Division) vide order dated 12.08.2016, though she was denied her original seniority despite the fact that her promotion had merely been deferred and she was never declared unfit. According to the petitioner, under Rule 12(D) of the C.G. Civil Services (General Conditions of Service) Rules, 1961, she was entitled to restoration of her original seniority, particularly when similarly situated judicial officers had been granted such benefit by the Hon'ble High Court vide order dated 17.05.2006. Thereafter, the petitioner was promoted to the next higher scale/post of Chief Judicial Magistrate vide order dated

02.07.2019, whereas her batchmates had already secured promotion to the post of Additional District Judge nearly two years earlier. It is further averred that during her posting as Civil Judge Class-I at Akaltara, District Janjgir-Champa, certain adverse remarks and grading of "D" and "E" were recorded against her by the concerned District Judge in an arbitrary and mala fide manner, though subsequently the Hon'ble High Court was pleased to upgrade the Grade "E" to Grade "D". The petitioner apprehends that despite availability of approximately 16 promotional posts of Additional District Judge in the near future, her present placement at Serial No. 23 in the seniority list may again deprive her of timely promotion on account of denial of original seniority.

3. Following reliefs have been prayed by the petitioner by way of this petition:-

*"10.1 That this Hon'ble Court may kindly allow this petition and call for the entire record of the case.*

*10.2 That, the Hon'ble Court be pleased to allow the petition and direct the competent authority to restore the seniority of the petitioner from the date her batch mates (year 2008) were given promotion vide order dated 14.08.2014.*

*10.3 Deleted as per Hon'ble Court order dated 04.12.2025.*

*10.4 That, Hon'ble Court may kindly be*

*pleased to allow this petition and grant all the consequential benefits.”*

4. Brief facts necessary for adjudication of the case are that the petitioner was selected and appointed as Civil Judge Class-II (Junior Division) in the year 2008, having secured 14th position in the merit list amongst 60 selected candidates. Pursuant to such selection, the petitioner was appointed on 26.12.2008 and joined service at the District & Sessions Court, Durg. The service conditions of the petitioner are governed by the Chhattisgarh Lower Judicial Service (Recruitment and Conditions of Service) Rules, 2006. During the course of service, the petitioner discharged her judicial duties with sincerity, honesty and devotion, on account whereof she was confirmed in service by the Hon'ble High Court vide order dated 01.09.2012 maintaining her original merit position. After completion of five years of service as Civil Judge Class-II (Junior Division), the petitioner became entitled for consideration for promotion to the post of Civil Judge Class-I (Senior Division) under Rule 5(2) read with Schedule-II of the Rules of 2006. The petitioner's ACRs for the relevant period were unblemished and there existed no adverse remarks against her. The petitioner consistently secured "C" grading from the year 2009-10 to 2012-13 and "B" grading in the year 2013-14. During her posting at Durg, one complaint was made against the petitioner by the then

Superintendent of Police in relation to judicial proceedings initiated on a complaint filed by one Virendra Kurre under Sections 200 and 202 Cr.P.C., arising out of an application under Section 156(3) Cr.P.C. The petitioner, while functioning as the Presiding Officer, had passed judicial orders in accordance with law directing registration of FIR against the concerned officials. On the basis of said complaint, when an explanation was sought, the petitioner duly submitted her explanation to the said complaint on 04.03.2013. Thereafter, no communication, departmental enquiry or disciplinary proceedings were initiated against the petitioner and, therefore, she bona fide believed that the matter stood closed. Thereafter, the Hon'ble High Court issued promotion order dated 14.08.2014 promoting members of the 2008 batch from the post of Civil Judge Class-II (Junior Division) to Civil Judge Class-I (Senior Division). In the said order, 45 judicial officers were promoted, 5 officers including the petitioner were kept in the category of "deferred", whereas 3 officers were declared unfit. At the relevant point of time, the petitioner had no knowledge regarding the reasons for deferment and was not even aware of the implications of such deferment. Aggrieved by the said action, the petitioner submitted a representation dated 15.04.2015 seeking consideration of her promotion and grant of consequential benefits, however, the said representation remained undecided and no communication was ever made to her regarding the same. After

nearly two years, the petitioner was promoted to the post of Civil Judge Class-I (Senior Division) vide order dated 12.08.2016 and was posted at Akaltara, District Janjgir-Champa. However, despite the fact that her case had merely been deferred and she was never declared unfit, the petitioner was denied restoration of her original seniority. As per Sub Rule 12(D) of the C.G. Civil Services (General Conditions of Service) Rules, 1961, an employee whose case was deferred and who is subsequently found fit is entitled to restoration of original seniority from the date his or her immediate junior was promoted. Denial of such benefit to the petitioner resulted in loss of seniority and adversely affected her future promotional prospects. Thereafter, the petitioner again submitted a representation dated 09.11.2017 seeking grant of original seniority and consequential benefits. However, the same came to be rejected vide memorandum dated 21.02.2018 by a non-speaking and unreasoned order communicated through the Registrar General. During her posting as Civil Judge Class-I at Akaltara, District Janjgir-Champa, adverse remarks along with grading "D" were communicated to the petitioner for the period from 01.04.2016 to 31.03.2017. In the subsequent year also, the petitioner received adverse remarks along with grading "E" for the period from 01.04.2017 to 31.03.2018. The petitioner submitted detailed representations against the said adverse entries and grading.

Subsequently, the Hon'ble High Court was pleased to upgrade the grading from "E" to "D", though the prayer for expunging the adverse remarks was rejected. Thereafter, the petitioner was promoted to the post of Chief Judicial Magistrate vide order dated 02.07.2019 and was posted at Surajpur and later transferred to Gariyaband. From the year 2014 till date, no complaint or disciplinary proceedings have ever been initiated against the petitioner and her subsequent ACR gradings have remained satisfactory, including "B" gradings in later years. In the year 2021, vacancies for promotion to the post of District Judge (Entry Level) under Rule 5(1)(a) and Rule 5(1)(b) of the Chhattisgarh Higher Judicial Service (Recruitment and Conditions of Service) Rules, 2006 were notified. However, due to denial of original seniority, the petitioner was placed at Serial No. 23 in the seniority list of eligible judicial officers and consequently could neither secure promotion nor effectively compete for selection. Similarly, in the eligible list issued in the year 2022 for promotion to the post of District Judge (Entry Level), the petitioner was placed at Serial No. 14 and her chances of promotion again became remote solely because of denial of restoration of her original seniority. The petitioner, despite suffering continuous prejudice in service career, initially lacked the courage to challenge the actions of her own department as she genuinely apprehended that pursuing legal remedies against the

department may further adversely affect her future promotional prospects. However, in view of recurring prejudice and continuous denial of legitimate service benefits, the petitioner has now been constrained to invoke the extraordinary jurisdiction of this Court by filing the present petition.

5. Mr. T.K. Jha & Mr. Anumeh Shrivastava, learned counsel for the petitioner submit that the petitioner had an unblemished service record till the year 2014 and there existed neither any adverse ACR nor any departmental enquiry or disciplinary proceedings against her. Despite such clean service record, her promotion to the post of Civil Judge Class-I (Senior Division) was deferred vide order dated 14.08.2014 without assigning any reason, which action is arbitrary, unjust and contrary to the provisions of Sub Rule 12(D) of the C.G. Civil Services (General Conditions of Service) Rules, 1961. It is further submitted that when the petitioner was subsequently promoted vide order dated 12.08.2016, she was legally entitled to restoration of her original seniority in terms of Rule 12(D), however the same was illegally denied, thereby causing serious prejudice to her future promotional prospects. Learned counsel further submits that similarly situated officers, including one Shri Pradeep Kumar Shrivastava, who had earlier been deferred, were granted restoration of original seniority by the Hon'ble High Court vide order dated 17.05.2006, and therefore denial of the same benefit to the

petitioner is discriminatory and violative of Articles 14 and 16 of the Constitution of India. It is also contended that during her posting at Akaltara, District Janjgir-Champa, the petitioner was facing considerable personal and medical difficulties, including post-delivery health complications while simultaneously taking care of her two minor children aged about six years and six months respectively. Despite such circumstances, the petitioner discharged her judicial duties with utmost sincerity and dedication and maintained satisfactory judicial performance, including good disposal of old civil and criminal cases, Lok Adalat matters and legal aid activities conducted pursuant to directions of the Hon'ble High Court. It is submitted that the adverse gradings of "D" for the year 2016-17 and "E" for the year 2017-18, later upgraded to "D" by the Hon'ble High Court, were arbitrary and mala fide in nature and not reflective of her actual performance and integrity.

**6.** Learned counsel submit that due to denial of original seniority, the petitioner's position in the gradation list drastically fell from 14th rank in her batch to 47th rank and presently she stands much lower in the gradation list than what she would otherwise have occupied. Such loss of seniority has seriously affected her service career, morale and chances of promotion to the Higher Judicial Service. It is argued that seniority is a valuable civil right having direct nexus with promotional avenues and service benefits. In support of the

aforesaid submissions, reliance has been placed upon the judgment of the Hon'ble Supreme Court in ***H.S. Vankani v. State of Gujarat AIR 2010 SC 1714*** wherein it has been held that seniority is a vital civil right affecting the future career progression of a government servant and that unsettling seniority causes bitterness, resentment and adversely impacts efficiency in administration. Reliance has also been placed on the decision of the Hon'ble Supreme Court in ***Krishna Prasad v. State of Bihar AIR 2020 (1) SCCD 272 (SC)*** wherein it has been held that disciplinary action against a judicial officer cannot be initiated merely because erroneous judicial orders have been passed unless there exists material to show that such orders were passed for extraneous considerations. Learned counsel submit that the complaint made against the petitioner arose purely from discharge of judicial functions and no departmental enquiry or misconduct was ever established against her.

7. Learned counsel for the petitioner further submit that the petitioner was denied promotion without there being any plausible or justifiable reason, despite being fully eligible and entitled for promotion to the post of Civil Judge Class-I (Senior Division) when the cases of other similarly situated judicial officers were considered and promotions were granted vide order dated 14.08.2014. It is submitted that the petitioner's case was merely

deferred by the Departmental Promotion Committee on the ground that a complaint had been submitted by the Superintendent of Police, Durg. Pursuant thereto, the petitioner was called upon to submit her explanation and she duly furnished a detailed reply to the allegations levelled against her. Thereafter, neither any departmental enquiry nor any disciplinary proceedings were initiated against the petitioner. Thus, the very basis on which her case was deferred stood completely diluted and ceased to survive. Learned counsel submits that the petitioner was subsequently promoted to the post of Civil Judge Class-I (Senior Division) vide order dated 12.08.2016. From the said promotion order itself, it is evident that the petitioner was found fit and suitable for promotion. According to learned counsel, once the petitioner was ultimately found fit and promoted, there remained no justification for denying her promotion from the date on which her batchmates and other similarly situated officers were promoted, namely 14.08.2014. It is contended that the petitioner was, in fact, entitled to promotion from the said date itself. Learned counsel for the petitioner further contends that the objection raised by the respondents that the petitioner never challenged the rejection of her representation seeking promotion and restoration of seniority at par with other similarly situated judicial officers is misconceived. It is submitted that the representation was never decided on merits and no

reasons whatsoever were assigned while rejecting the same. The order merely states that the representation dated 09.11.2017 seeking grant of original seniority stood rejected after due consideration. Such a cryptic and non-speaking order, devoid of any reasons, cannot be treated as a valid adjudication on merits and, therefore, the petitioner cannot be non-suited on the ground that the said order was not separately challenged.

8. Learned counsel further submit that the objection regarding delay and laches is also unsustainable. The petitioner had been continuously pursuing her claim by submitting representations before the competent authorities seeking promotion and restoration of seniority at par with those officers who were promoted vide order dated 14.08.2014. It is argued that matters relating to promotion and seniority have recurring civil consequences throughout the tenure of service and, therefore, constitute a continuing cause of action. It is further submitted that owing to the intervening Covid-19 pandemic and certain personal difficulties, the petitioner could not approach this Court at an earlier point of time. However, the same cannot be a ground to deny her legitimate service benefits. Learned counsel argue that the sole reason for deferment of the petitioner's case by the Departmental Promotion Committee was the complaint made by the Superintendent of Police, Durg. Had any departmental enquiry or disciplinary proceedings been initiated

against the petitioner pursuant to the said complaint, the matter would have stood on a different footing. However, admittedly, no action whatsoever was taken on the said complaint and no enquiry was ever instituted. According to learned counsel, this clearly demonstrates that the respondents were satisfied with the explanation furnished by the petitioner and did not find any substance warranting further action. Consequently, the complaint could not have been relied upon to permanently deprive the petitioner of her rightful promotion and consequential seniority. In the aforesaid circumstances, learned counsel submit that once the petitioner was ultimately promoted in the year 2016 and no adverse action was ever initiated against her, she is entitled to be treated at par with the officers who were promoted on 14.08.2014. It is, therefore, prayed that the petition be allowed and the petitioner be granted promotion notionally with effect from 14.08.2014, along with restoration of her original seniority and all consequential service benefits, including consideration for further promotional avenues on that basis.

9. Reliance has been placed on the judgment of the Hon'ble Supreme Court in ***Ishwar Chand Jain v. High Court of Punjab and Haryana (1988) 3 SCC 370*** to contend that independence of the judiciary and protection of honest judicial officers is an essential constitutional mandate under Article 235 of the Constitution of India

and that judicial officers should not be victimized on the basis of motivated or frivolous complaints arising out of judicial orders passed in discharge of official duties. Learned counsel therefore submits that the action of the respondents in deferring the petitioner's promotion, denying restoration of original seniority and recording arbitrary adverse remarks is illegal, arbitrary and violative of Articles 14, 16 and 21 of the Constitution of India and deserves to be interfered with by this Hon'ble Court. Reliance has also been placed upon the judgments in the matters of ***Krishnadatt Awasthy vs. State of M.P. (2025) 7 SCC 545, Madhyamam Broadcasting Ltd. vs. Union of India (2023) 13 SCC 401, S.N. Mukherjee vs. Union of India (1990) 4 SCC 594, Kranti Associates (P) Ltd. vs. Masood Ahmed Khan (2010) 9 SCC 496, Salik Ram Chandrakar vs. State of Chhattisgarh 2025 SCC OnLine Chh 11503, Pushpa Kiran Bhagat vs. State of Chhattisgarh 2025 SCC OnLine Chh 13914, Mahendra Kumar Shrivastava vs. Chhattisgarh State Power Distribution Company Limited 2025 OnLine Chh 11506, Union of India vs, K.V. Jankiraman (1991) 4 SCC 109, Shatruhan Prasad Kurrey vs. The State of Chhattisgarh & Ors. SLP(C) Diary No. 33707/2022 and Union of India vs. Sangram Keshari Nayak (2007) 6 SCC 704.***

**10.** Per contra, Mr. Ashish Surana, learned counsel appearing for respondent Nos. 1 to 3 vehemently opposes the petition and

submits that the petitioner is not entitled to claim promotion with effect from 14.08.2014, i.e., the date on which other eligible judicial officers were promoted to the post of Civil Judge Class-I (Senior Division). It is submitted that at the relevant point of time, the case of the petitioner was specifically deferred by the Departmental Promotion Committee on account of a complaint received from the Superintendent of Police, Durg. The deferment was, therefore, based upon a conscious decision taken by the competent authority while considering the suitability of eligible officers for promotion. Learned counsel submits that although no departmental enquiry was ultimately initiated and no disciplinary action came to be taken against the petitioner on the basis of the said complaint, the fact remains that the petitioner was not found suitable for promotion by the Departmental Promotion Committee in the promotion exercise conducted in the year 2014. The petitioner accepted the said position and did not challenge either the decision of the Departmental Promotion Committee or the promotion order dated 14.08.2014 before any competent forum at the relevant point of time. It is further contended that the petitioner was subsequently promoted to the post of Civil Judge Class-I (Senior Division) in the year 2016 and thereafter continued to avail the benefits flowing from such promotion without raising any legal challenge regarding her earlier non-promotion. According to learned counsel, the

acceptance of the subsequent promotion without protest clearly indicates that the petitioner had acquiesced in the decision taken by the authorities and had accepted her position in the service hierarchy. Having accepted the subsequent promotion and all consequential benefits, the petitioner cannot now seek to reopen issues which had attained finality long ago. Learned counsel further submits that the present petition suffers from gross delay and laches. The promotion order sought to be indirectly questioned was issued on 14.08.2014, whereas the petitioner has approached this Court after an inordinate lapse of several years. During this intervening period, not only was the petitioner promoted in the year 2016, but several other service-related developments and promotions also took place. Entertaining the petition at such a belated stage would unsettle the settled seniority position and adversely affect the rights of several officers who are not before this Court. It is also argued that the petitioner had submitted a representation seeking restoration of original seniority and grant of promotion from the year 2014, which representation came to be rejected by the competent authority vide communication issued in the year 2018. Despite rejection of her claim, the petitioner neither challenged the said order nor questioned its legality before any Court of law within a reasonable period. Consequently, the order rejecting her representation has attained finality and cannot now be

indirectly assailed through the present proceedings. Learned counsel submits that merely because the order rejecting the representation may not contain elaborate reasons, the petitioner was nevertheless required to challenge the same if she intended to dispute the decision of the authorities. Having failed to do so, she cannot be permitted to circumvent the effect of the said order by filing the present petition after several years. It is, therefore, argued that the petitioner is guilty of acquiescence, waiver and delay, and having accepted her subsequent promotions as well as the seniority position assigned to her, she is estopped from claiming retrospective promotion from 14.08.2014. In view of the aforesaid facts and circumstances, learned counsel submits that the petitioner is not entitled to any relief and the writ petition deserves to be dismissed.

**11.** Mr. Gourav Singhal, learned counsel appearing for respondent Nos. 5, 6, 11, 13, 14, 23, 24, 25 and 34 submits that the writ petition is liable to be dismissed at the threshold on account of gross delay and laches. It is contended that the petitioner has challenged actions pertaining to the years 2014, 2016 and 2018 by filing the present petition only in the year 2023 without furnishing any satisfactory explanation for such inordinate delay. According to learned counsel, the petitioner is a judicial officer well acquainted with legal remedies and, therefore, cannot

seek indulgence after allowing her alleged grievance to remain dormant for several years. Learned counsel further submits that so far as the challenge to the Annual Confidential Reports for the years 2016-17 and 2017-18 is concerned, the petitioner has directly approached this Court without first availing the appropriate remedy before the competent authority for seeking upgradation of the gradings. In the absence of any material demonstrating that the petitioner had pursued the prescribed departmental remedy, the challenge to the ACR gradings is premature and not maintainable. It is also argued that the writ petition suffers from misjoinder of causes of action. The claim relating to restoration of seniority and grant of promotion from the year 2014 constitutes a distinct cause of action, whereas the challenge to the ACR gradings for the years 2016-17 and 2017-18 gives rise to a separate and independent cause of action. Both claims cannot be conveniently adjudicated in a single writ petition and, therefore, the petition is misconceived. It is accordingly prayed that the writ petition, being devoid of merit and suffering from delay, non-maintainability and misjoinder of causes of action, deserves to be dismissed.

**12.** Ms. Smriti Ekka, learned counsel appearing for respondent No. 28 adopts the submissions advanced on behalf of respondent Nos. 1 to 3 and further submits that the present writ petition deserves to be dismissed on the grounds of delay, laches and

acquiescence. It is contended that the petitioner seeks restoration of seniority and consequential promotion from 14.08.2014, whereas the present petition has been filed only in the year 2023 after an unexplained delay of nearly nine years. Despite being aware that her promotion had been deferred in 2014 and that she was subsequently promoted in 2016, the petitioner neither challenged the deferment nor the promotion order dated 14.08.2014. It is further submitted that her representation seeking restoration of seniority was rejected on 21.02.2018 and the said order was also never challenged, thereby attaining finality. Learned counsel submits that the petitioner accepted her subsequent promotions, including promotions to higher posts in the judicial service, without protest and, therefore, is deemed to have acquiesced in the seniority position assigned to her. It is argued that entertaining the petition at this stage would unsettle the settled seniority of several judicial officers and adversely affect rights which have crystallized over the years. It is further contended that the petition suffers from non-joinder of necessary parties, as any direction regarding retrospective seniority would directly affect the service rights and promotional prospects of several officers who have not been impleaded in the present proceedings. Learned counsel also submits that retrospective seniority cannot be claimed as a matter of right. The petitioner was considered by the

Departmental Promotion Committee in the year 2014 but was not found fit for promotion at that stage, whereafter she was promoted in the year 2016. Since promotion is not a vested right and only consideration for promotion can be claimed, no legal right of the petitioner can be said to have been infringed. Learned counsel further submits that the petitioner has approached this Court only after failing to secure further promotional benefits and is seeking alteration of a long-settled seniority position for consequential advantages. It is lastly contended that Rule 12(D) of the Chhattisgarh Civil Services (General Conditions of Service) Rules, 1961 does not confer an automatic right to restoration of seniority and the competent authority was justified in assigning seniority to the petitioner from the date she was found fit and promoted in the year 2016. On these grounds, it is prayed that the writ petition be dismissed.

13. She has placed reliance upon the judgments in the matters of ***Vijay Kumar Kaul vs. Union of India (2012) 7 SCC 610, Union of India vs. Chaman Rana (2018) 5 SCC 798, Public Service Commission, Uttaranchal vs. Mamta Bisht & Ors. [AIR 2010 SC 2613, Jitendra Naidu vs. Union of India & Ors (WPS No.1115/2017), Mrs. Lata Dadsena & Anr. vs. State of Chhattisgarh & Ors.(WPS No.4027/2023), State of Bihar & Ors. vs. Akhouri Sachindra Narth & Ors. 1991 Supp (1) SCC 334,***

***Chandu Lal Thakur vs. State of Chhattisgarh (WPS No. 90/2016) and Kumar Lal Uikey vs. Chhattisgarh State Power Holding Co. Ltd. & Ors. (WPS No.583/2014).***

14. Mr. Raja Sharma & Ms. Aditi Parakh, learned counsel appearing for respondent No. 19 oppose the writ petition and submits that the same is liable to be dismissed on the grounds of delay, laches, acquiescence and finality. It is contended that the petition has been filed in the year 2023 seeking to challenge matters relating to promotion and seniority arising in the years 2014, 2016 and 2018. Despite being fully aware that her case was deferred by the Departmental Promotion Committee in the year 2014 and that she was subsequently promoted in the year 2016, the petitioner never challenged either the deferment order or the promotion granted to her batchmates. It is further submitted that the petitioner's representation seeking restoration of original seniority was rejected on 21.02.2018 and the said order was also never assailed, thereby attaining finality. In support of the aforesaid submissions, reliance has been placed on various judgments cited in the written submissions filed on behalf of respondent No. 19. Learned counsel further submits that the petitioner, after accepting her promotion as Civil Judge Class-I in the year 2016 and subsequent promotions granted thereafter, cannot now seek to challenge the very process from which she has derived benefits. The conduct of the petitioner

clearly attracts the principles of acquiescence, waiver and approbate and reprobate. It is argued that any interference at this stage would seriously prejudice the rights of several judicial officers whose seniority and promotional prospects have crystallized over the years. It is also contended that the relief sought by the petitioner for grant of retrospective seniority from 14.08.2014 is legally impermissible inasmuch as on the said date she was admittedly not borne in the promoted cadre and had not been found fit for promotion by the Departmental Promotion Committee. According to learned counsel, seniority can flow only from a valid promotion and assumption of charge in the promoted post and cannot be granted retrospectively so as to unsettle the settled rights of others. Learned counsel further submits that Rule 12(D) of the Chhattisgarh Civil Services (General Conditions of Service) Rules, 1961 does not confer any automatic or vested right upon the petitioner to claim restoration of original seniority. The said provision operates only in the realm of determination of seniority after promotion and cannot be invoked to reopen or nullify the decision of the Departmental Promotion Committee deferring the petitioner's promotion in the year 2014. It is argued that the petitioner is seeking to indirectly challenge a decision which has long attained finality.

15. Reliance has been placed upon the judgments of the Hon'ble Supreme Court of India, inter alia: *P.S. Sadasivaswamy v. State of Tamil Nadu*, (1975) 1 SCC 152, *State of Uttaranchal v. Shiv Charan Singh Bhandari*, (2013) 12 SCC 179, *K.R. Mudgal v. R.P. Singh*, (1986) 4 SCC 531, *H.S. Vankani v. State of Gujarat*, (2010) 4 SCC 301, *Shiba Shankar Mohapatra v. State of Orissa*, (2010) 12 SCC 47, *Union of India v. N. Murugesan*, (2022) 2 SCC 25, *State of Punjab v. Dhanjit Singh Sandhu*, (2014) 15 SCC 144, *Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra*, (1990) 2 SCC 715, *Government of West Bengal v. Dr. Amal Satpathi*, 2024 INSC 906, *Dr. Krushna Chandra Sahu v. State of Orissa*, 1995 Supp (3) SCR 419, *Bimlesh Tanwar v. State of Haryana*, (2003) 5 SCC 604; *Ajay Kumar Shukla v. Arvind Rai*, (2022) 12 SCC 579; *Ishwar Chand Jain v. High Court of Punjab and Haryana*, (2001) 2 SCC 276, *R.S. Raghunath v. State of Karnataka*, (1992) 1 SCC 335; *Ashok Ram Parhad v. State of Maharashtra*, 2023 SCC OnLine SC 311; *Chief Justice of Andhra Pradesh v. L.V.A. Dikshitulu*, (1979) 2 SCC 34 and *All India Judges' Association (3) v. Union of India*, (2002) 4 SCC 247. On the aforesaid grounds, and placing reliance upon the various aforesaid judgments, learned counsel for respondent No. 19 submits that the writ petition is devoid of merit and deserves to be dismissed.

**16.** Mr. Abhishek Gupta, learned counsel appearing for respondent Nos. 4, 7, 8, 10, 16, 22, 29 & 30 submits that the writ petition is not maintainable and deserves to be dismissed. It is submitted that the petitioner, after an inordinate delay of nearly nine years, seeks to unsettle a long-settled position of promotion and inter se seniority which has attained finality and has been acted upon by several officers whose rights have crystallized. The petitioner was duly considered by the Departmental Promotion Committee in 2014 and her case was deferred in accordance with the applicable rules; she was subsequently promoted in 2016 and cannot now seek retrospective promotion from 14.08.2014. It is further submitted that the petition suffers from gross delay and laches, acquiescence and waiver, as the petitioner accepted her promotion in 2016 without protest and never challenged the 2014 or 2018 orders within a reasonable time. Entertaining such a belated claim would unsettle settled seniority and prejudice third-party rights of officers not before this Court. It is also submitted that the petition suffers from non-joinder of necessary parties. It is further contended that Rule 12(D) of the Chhattisgarh Civil Services (General Conditions of Service) Rules, 1961 does not confer any automatic right to retrospective seniority from an earlier date of consideration, and seniority can only flow from valid

promotion and assumption of charge. On these grounds, the writ petition is liable to be dismissed.

17. Mr. Aman Kesharwani, learned counsel appearing for respondent No. 9 submits that the present writ petition is liable to be dismissed as being devoid of merit and suffering from gross delay and laches. It is submitted that the petitioner seeks to challenge the settled position of promotion and inter se seniority after an inordinate lapse of time, thereby unsettling the rights of several judicial officers who have been functioning on the basis of the promotion order dated 14.08.2014 and subsequent service developments. Learned counsel submits that the petitioner, having been duly considered by the Departmental Promotion Committee and having been subsequently promoted in the year 2016, cannot claim retrospective promotion or restoration of seniority from 14.08.2014, as such a claim is not recognized under the applicable service jurisprudence. It is further submitted that the writ petition is barred by acquiescence and waiver, as the petitioner accepted her promotion without protest and failed to challenge the relevant orders within a reasonable period. It is also contended that entertaining the present petition would adversely affect third-party rights of officers who are not before this Hon'ble Court and would lead to unsettling of a long-standing and settled seniority position.

On these grounds, learned counsel submits that the writ petition deserves to be dismissed.

**18.** I have heard learned counsel for the parties and perused the material available on record carefully.

**19.** Upon perusal of the material available on record, this Court finds that the petitioner was not promoted to the post of Civil Judge Class-I (Senior Division) in the promotion exercise undertaken in the year 2014 solely on account of a complaint submitted by the then Superintendent of Police, Durg. The Departmental Promotion Committee (DPC), instead of rejecting the petitioner's candidature, merely deferred consideration of her case on the basis of the said complaint. It is not in dispute that pursuant to the complaint, a show-cause notice was issued to the petitioner and she submitted her explanation thereto. However, thereafter no departmental enquiry was initiated, no disciplinary proceedings were instituted, and no adverse order was ever passed against the petitioner. Thus, the complaint never culminated into any finding of misconduct or any action prejudicial to the petitioner.

**20.** It is significant to note that the DPC did not declare the petitioner unfit for promotion. Her case was only kept in a deferred category. Subsequently, vide order dated 12.08.2016, the petitioner was promoted to the post of Civil Judge Class-I (Senior Division). Nothing has been brought on record to demonstrate that between

the years 2014 and 2016 any new material emerged in favour of the petitioner or that any circumstance which rendered her unsuitable in 2014 had ceased to exist by 2016. Rather, the record indicates that the petitioner was promoted on the basis of the same service profile and ACRs which were available at the time when her case was initially considered. This clearly demonstrates that the petitioner was otherwise fit and eligible for promotion when her batchmates were promoted in the year 2014. The only impediment was the pendency of a complaint which ultimately resulted in no adverse action whatsoever. In such circumstances, the deferment of her case could at best have been temporary and precautionary in nature. Once the complaint did not culminate in any disciplinary proceedings, enquiry, punishment or adverse finding, the deferment ceased to have any legal significance. Consequently, the petitioner cannot be made to suffer adverse service consequences merely because her case was temporarily deferred pending consideration of a complaint that ultimately proved inconsequential.

**21.** The contention advanced on behalf of the respondents that the petitioner's claim is liable to be rejected because her representation stood rejected and the said rejection order was never challenged also does not merit acceptance. A perusal of the communication dated 21.02.2018 reveals that the representation

was rejected by a cryptic order merely stating that upon consideration the claim was not found fit to be accepted. No reasons whatsoever have been assigned. It is now well settled that reasons are the heartbeat of every administrative or quasi-judicial decision and ensure transparency, fairness and accountability in decision-making. An order affecting valuable service rights, such as seniority and promotional prospects, cannot be sustained when it is completely devoid of reasons.

**22.** Further, the claim raised by the petitioner pertains to promotion and consequential seniority during the subsistence of service. Such issues have recurring civil consequences affecting future promotional avenues and service benefits. Therefore, the objection regarding delay and laches cannot be examined in a purely technical manner, particularly when the petitioner continues to suffer the consequences of the impugned action throughout her service career. The subsequent adverse ACR gradings recorded against the petitioner for later years also cannot be relied upon to deny the relief sought in the present petition. The petitioner's claim relates to her entitlement for promotion in the year 2014 and is required to be assessed on the basis of the service record and material which were available at the relevant point of time. Admittedly, the petitioner possessed the requisite eligibility and satisfactory ACRs for consideration to the post of Civil Judge

Class-I (Senior Division) when the promotion exercise of 2014 was undertaken.

**23.** Accordingly, this Court is of the considered view that once the complaint, which formed the sole basis for deferment of the petitioner's case, did not result in any disciplinary action or adverse finding and the petitioner was subsequently found fit and promoted, the respondents were not justified in allowing the deferment to operate to her detriment for all future purposes. The petitioner, therefore, cannot be denied consideration for consequential service benefits solely on account of such deferment.

**24.** In the matter of **Major General H.M. Singh v. Union of India 2014) 3 SCC 670**, the Hon'ble Supreme Court has held as under:-

*“28. The question that arises for consideration is, whether the non-consideration of the claim of the appellant would violate the fundamental rights vested in him under Articles 14 and 16 of the Constitution of India. The answer to the aforesaid query would be in the affirmative... if the appellant was the senior most serving Major General eligible for consideration, he most definitely had the fundamental right of being considered against the vacancy, and also the fundamental right of being promoted if he was adjudged suitable. Failing which, he would be deprived of his fundamental right of equality before the law and equal protection*

of the laws extended by Article 14 of the Constitution of India.”

25. In the matter of **Harpal Singh vs. State of Punjab and others 2026 SCC OnLine P & H 9451**, it has been held as under:-

“7. The Supreme Court in *Yunus (Baboobhai) A Hamid Padvekar v. State of Maharashtra Through its Secretary*, (2009) 2 SCT 24, while referring to the issue of delay and laches, had held as follows:

“8. Delay or laches is one of the factors which is to be borne in mind by the High Courts when they exercise their discretionary powers under Article 226 of the Constitution of India (in short the ‘Constitution’). In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in *Durga Prasad v. Chief Controller of Imports and Exports* (1964 SCC OnLine SC 1 : AIR 1970 SC 769). Of course, the discretion has to be exercised judicially and reasonably.

9. What was stated in this regard by Sir Barnes Peacock in *Lindsay Petroleum Company v. Prosper Armstrong Hurde, etc.* [L.R.] 5 P.C. 221 at page 239 was approved by this Court in *Moon Mills Ltd. v. Industrial Courts* (1967 SCC

*OnLine SC 117 : AIR 1967 SC 1450) and Maharashtra State Transport Corporation v. Balwant Regular Motor Service (1968 SCC OnLine SC 54 : AIR 1969 SC 329), Sir Barnes had stated:*

*“Now the doctrine of laches in Courts of Equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.”*

*10. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation with Article 32 of the Constitution. It is apparent that what has been stated as regards that Article*

would apply, a fortiori, to Article 226. It was observed in *R.N. Bose v. Union of India* ((1970) 1 SCC 84 : AIR 1970 SC 470) that no relief can be given to the petitioner who without any reasonable Explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.

11. It was stated in *State of M.P. v. Nandlal* ((1986) 4 SCC 566 : AIR 1987 SC 251) that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its trail new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which

*also weighs with the High Court in deciding whether or not to exercise such jurisdiction.*

*12. In view of the aforesaid position we are not inclined to interfere in this appeal which is dismissed accordingly.”*

*8. Further the Supreme Court in State of Uttaranchal v. Sri Shiv Charan Singh Bhandari, (2013) 12 SCC 179, while considering the issue regarding delay and laches and referring to earlier judgments on the issue, opined that repeated representations made will not keep the issues alive. A state or a dead issue/dispute cannot be revived even if such a representation has been decided either by the authority or got decided by getting a direction from the court as the issue regarding delay and laches is to be decided with reference to original cause of action and not with reference to any such order passed. Delay and laches on the part of a government servant may disentitle him from receiving the benefit that had been granted to others. Article 14 of the Constitution of India would not be attracted as it is well established principle that the law favours those who are alert and vigilant. Even equality has to be claimed at the right juncture and not on expiry of reasonable time. Even if there is no period prescribed for filing the writ petition under Article 226 of the Constitution of India, yet it should be filed within a reasonable time. Though it is not a strict rule, the courts can always interfere even subsequent thereto, but relief to a*

*person, who allows things to happen and then approach the court and puts forward a state claim and try to unsettle settled matters, can certainly be refused on account of delay and laches. Anyone who sleeps over his rights is bound to suffer the consequences. An employee who remains dormant like a “Rip Van Winkle” and awakens from his slumber at his own convenience, cannot claim relief, as such conduct justifies denial on the ground of delay and laches. Relevant paragraphs from the aforesaid judgment are extracted below:*

*“13. We have no trace of doubt that the respondents could have challenged the ad hoc promotion conferred on the junior employee at the relevant time. They chose not to do so for six years and the junior employee held the promotional post for six years till regular promotion took place. The submission of the learned counsel for the respondents is that they had given representations at the relevant time but the same fell in deaf ears. It is interesting to note that when the regular selection took place, they accepted the position solely because the seniority was maintained and, thereafter, they knocked at the doors of the Tribunal only in 2003. It is clear as noon day that the cause of action had arisen for assailing the order when the junior employee was promoted on ad hoc basis on 15-11-1983. In C. Jacob v. Director of Geology and Mining, (2008) 10 SCC 115 : (2008) 4 SCT 604, a two-*

*Judge Bench was dealing with the concept of representations and the directions issued by the court or Tribunal to consider the representations and the challenge to the said rejection thereafter. In that context, the court has expressed thus:*

*“Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become state or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a state or dead claim.”*

14. xx xx xx xx

15. xx xx xx xx

16. xx xx xx xx

17. *In Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2), (2011) 4 SCC 374 : (2011) 2 SCC (Civ) 268 : (2011) 2 SCT 712, a three-Judge Bench of the Hon'ble Supreme Court reiterated the principle stated in Jagdish Lal v. State of Haryana, (1997) 6 SCC 538 : (1998) 1 SCT 26 and proceeded to observe that as the respondents therein preferred to sleep over their rights and*

*approached the Tribunal in 1997, they would not get the benefit of the order dated 7-7-1992.*

*18. In State of T.N. v. Seshachalam, (2007) 10 SCC 137 : (2007) 4 SCT 472, this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus:*

*“... filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.*

*19. xx xx xx xx*

*20. In New Delhi Municipal Council v. Pan Singh, (2007) 9 SCC 278 : (2007) 2 SCT 601, the Court has opined that though there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, yet ordinarily a writ petition should be filed within a reasonable time. In the said case the respondents had filed the writ petition after seventeen years and the court, as stated earlier, took note of the delay and laches as relevant factors and set aside the order passed by the High Court which had exercised the discretionary jurisdiction.”*

*9. In a recent judgment by a Division Bench of this Court in Ram Kumar v. State of Haryana, (2022) 3 SCT 346, while rejecting the claim of the petitioner for counting of his ad hoc service, for the purpose of seniority/pension and regularization in service on completion of 02 years as per policy, held that the petition filed by him suffered from gross, inordinate and unexplained delay in approaching the High Court. In the said judgment, it has been held as under:*

*“10. What we wish to emphasize, in particular, is that services of the appellant were regularized w.e.f. 1-4-1997. And, he was assigned a specific seniority position in the cadre. Where after, he continued to serve the department for nearly twenty five years, before attaining the age of superannuation in January, 2022. Needless to assert that during all these years, he availed all admissible benefits, promotions, and retired as Inspector. Thus, it rather appears that institution of the petition by the appellant was speculative and an attempt to resurrect a state and dead claim. The Supreme Court, in New Delhi Municipal Council v. Pan Singh, (2007) 9 SCC 278, observed:*

*“15. There is another aspect of the matter which cannot be lost sight of Respondents herein filed a Writ Petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the*

*earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the Writ Petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the Court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction. See Govt. of W.B. v. Tarun K. Roy [(2004) 1 SCC 347], Chairman, U.P. Jal Nigam v. Jaswant Singh [(2006) 12 Scale 347] and Karnataka Power Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan [(2006) 4 SCC 322]”*

11. Similarly, in *Jagdish Lal v. State of Haryana*, (1997) 6 SCC 538, it was held by the Supreme Court:

*“That apart, as this Court has repeatedly held, the delay disentitles the party to the discretionary relief under Article 226 or 32 of the Constitution. It is not necessary to reiterate all catena of precedents in this behalf. Suffice it to state that the appellant kept sleeping over their rights for long and elected to wake up when they had the impetus from *Vir Pal Chauhan* and *Ajit Singh's* ratios..... Therefore,*

*desperate attempts of the appellants to re-do the seniority had by them in various cadres/grades though in the same services according to 1974 Rules or 1980 Rule, are not amenable to judicial review at this belated stage....”*

*12. In the wake of the position as sketched out above, we are dissuaded to interfere with the impugned order and judgment rendered by the learned Single Judge. The appeal being bereft of merit is, accordingly, dismissed.”*

*12. In the present case, the petitioner was promoted to the post of Head Warder on 27-10-2004 and he retired from service, on attaining the age of superannuation, in the year 2016, whereas he approached this Court first time by filing CWP-2808-2019 in the year 2019, seeking promotion to the post of Head Warder w.e.f. 5-7-1995 when the persons junior to him were promoted, after a delay of more than 14 years from the date of his promotion i.e. 27-10-2004. Further, pursuant to the order dated 1-2-2019, passed by this Court in CWP-2808-2019, the respondent-department rejected the claim of the petitioner, vide impugned order dated 23-5-2019, and against the said order, the petitioner again approached this Court by filing CWP-18413-2024 in the year 2024 i.e. after a delay of about 05 years. Now, after the lapse of a period of more than 30 years, since 5-7-1995 i.e. the date when persons junior to the petitioner were promoted to*

*the post of Head Warder, the petitioners cannot be granted the said benefit. Such belated invocation of the writ jurisdiction, without furnishing any satisfactory Explanation for the prolonged silence, defeats the very object of equitable relief and disentitles the petitioners from any discretionary relief under Article 226 of the Constitution of India.”*

26. In **Mahendra Kumar Shrivastava (Supra)**, it has been held as under:-

*“26.The plea of delay and laches raised by the respondents also does not impress this Court. The claim pertains to pay fixation, which is a continuing cause of action, and the petitioner continues to be deprived of monetary benefits each month. It is now well-settled that in matters relating to fixation of pay, seniority, pension and service benefits, the mere passage of time cannot extinguish the legitimate and legal entitlement of an employee, unless there is material showing that the delay has caused prejudice to the administration. No such prejudice has been demonstrated in the present case.”*

27. In the matter of **Union of India and Others vs. Doly Loyi** **2024 SCC OnLine SC 2613**, the Hon’ble Supreme Court has held as under:-

*“9. Shri Wasim Qadri, learned senior counsel*

*appearing on behalf of the appellants drew the Court's attention towards the Office Memorandum (in short 'OM') dated 14<sup>th</sup> September, 1992 dealing with the 'Promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation-Procedure and guidelines to be followed'. The extract of the OM dated 14<sup>th</sup> September, 1992 relied upon by the learned counsel for the appellants is reproduced below:—*

*"2. At the time of consideration of the cases of Government servant for promotion, details of Government servant in the consideration zone for promotion falling under the following category should be specifically brought to the notice of the Departmental Promotion Committee:—*

- i) Government servants under suspension;*
- ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and*
- iii) Government servants in respect of whom prosecution for criminal charge is pending.*

*2.1 The Departmental Promotion Committee shall assess the suitability of Government servants coming within the purview of the circumstances*

*mentioned above along with other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending. The assessment of the DPC including 'unfit for promotion' and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed 'Findings regarding suitability for promotion to the grade/post of of Shri.. ...in respect (name of the Government servant). Not to be opened till the termination of the disciplinary case/criminal prosecution against Shri.....'. The proceeding of the DPC need only contain the note. The findings are contained in the attached sealed cover'. The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the findings of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover."*

*(emphasis supplied)*

22. *Learned counsel for appellant made a pertinent submission that the case of the respondent falls under the third clause of the above OM, i.e. Government servants in respect of whom prosecution for criminal charges is pending. Thus, the question requiring*

*consideration is as to whether a mere grant of prosecution sanction would be sufficient to infer that the prosecution for a criminal charge was pending against the respondent. Similar issue came up for consideration before this Court in the case of Union of India v. K.V. Jankiraman<sup>1</sup>, wherein it was held that sealed cover procedure is to be resorted to only after the charge memo/charge sheet is issued. The relevant extract is reproduced hereinbelow:*

*“16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this*

*point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The*

*authorities thus are not without a remedy.”(emphasis supplied)*

24. *Considering the above position, the disciplinary/criminal proceedings can be said to be initiated against the employee only when a charge memo is issued to the employee in a disciplinary proceeding or a charge-sheet for a criminal prosecution is filed in the competent Court. The sealed cover procedure is to be resorted to only after issuance of the charge-memo/charge-sheet is issued. The pendency of investigation and grant of prosecution sanction will not be sufficient to enable the authorities to adopt the sealed cover procedure.”*

28. In **K.V. Jankiraman (Supra)**, it is held that in a case where the promotion of the concerned employee was not done with sealed cover procedure adopted by the authorities. The concerned CAT has directed the authorities to open the sealed cover and consider the case of the petitioner for grant of promotion in case he is entitled. The said order was confirmed by the Hon’ble Supreme Court while stating that the CAT has rightly passed the order.

29. The Hon’ble High Court of Madhya Pradesh, while deciding the matter of **Kanvar Lal Yadav vs. State of MP and Others in WP No.13046/2019** has also reiterated the law laid down by the Hon’ble Supreme Court in **K.V. Jankiraman (Supra)** and held that where no charge-sheet was pending against an employee on the

date of the original DPC, the sealed cover procedure cannot be applied merely because a charge-sheet was issued subsequently. The Court further held that a deferred DPC relates back to the date of the original DPC, and an employee cannot be prejudiced due to administrative lapses such as the non-availability of ACRs.

30. In **Shatruhan Prasad Kurrey (Supra)**, it was held that :-

*“Since the disciplinary proceedings have been initiated against the petitioner, the adoption of sealed cover procedure, cannot be faulted with. However, the authorities cannot keep the disciplinary proceedings pending for an indefinite period, thereby causing adverse impact on the service career of the petitioner.”*

31. Further in the matter of **Sangram Keshari Nayak (Supra)**, the Hon'ble Supreme Court has held as under:-

*“6. An original application filed by the respondent before the Calcutta Bench of the Central Administrative Tribunal, which was eventually transferred to the Cuttack Bench, praying for a direction to the appellants to promote him to the said post from the date when his junior was appointed, was allowed by a judgment and order dated 19-8-2003. A writ petition filed by the appellants there against has been dismissed by the High Court, by reason of the impugned judgment.*

*14. Thus, there was no bar in promoting the*

*respondent during the period 14-1-1999 to 27-8-1999. No material was placed before the DPC to take recourse to the sealed cover procedure. In fact, none existed at the material time. Para 2 of the said circular specifically refers to submission of charge-sheet as the cut-off date when a departmental proceeding can be said to have been initiated. Even otherwise such a meaning had been given thereto by this Court in K. V. Jankiraman...”*

32. Reliance may also be placed upon the Constitution Bench judgment of the Hon'ble Supreme Court in **S.N. Mukherjee v. Union of India, (1990) 4 SCC 594**, wherein it has been held that recording of reasons by an administrative or quasi-judicial authority is an essential requirement of fair decision-making. The Hon'ble Supreme Court observed that recording of reasons guarantees due consideration of the matter by the authority, introduces clarity in the decision-making process and minimizes arbitrariness. It was further held that, except where specifically excluded, every administrative authority exercising judicial or quasi-judicial functions is required to record reasons for its decision and such reasons must be clear and explicit so as to indicate due consideration of the issues involved. In the present case, the communication dated 21.02.2018 rejecting the petitioner's representation merely states that the claim was rejected after

consideration and does not disclose any reason whatsoever. Such a cryptic and non-speaking order is therefore unsustainable in law in view of the principles laid down in **S.N. Mukherjee (supra)**.

**33.** It is a settled proposition of law that an employee cannot be made to suffer because of negligence, inaction or procedural lapses on the part of the employer or the department. In **P.N. Premachandran vs. State of Kerala (2004) 1 SCC 245**, the Hon'ble Supreme Court held that an employee cannot be prejudiced for faults attributable to the department.

**34.** In **Krishna Prasad Verma (Dead) through legal representatives v. State of Bihar and Others (2019) 10 SCC 640**, the Hon'ble Supreme Court has reiterated that judicial independence is a basic feature of the Constitution and that judicial officers must be free from external pressures while discharging their judicial functions. It has further been held that mere erroneous or incorrect judicial orders do not constitute misconduct unless accompanied by mala fides or extraneous considerations.

**35.** There can be no dispute with the settled proposition of law that promotion is not a vested right. However, the right to be fairly considered for promotion is a fundamental right flowing from Articles 14 and 16 of the Constitution of India. The Hon'ble Supreme Court in **Ajit Singh (II) vs. State of Punjab**

**(1999) 7 SCC 209** has reiterated that seniority and promotional rights form part of the equality clause under Articles 14 and 16 of the Constitution and arbitrary supersession or denial of promotional consideration cannot be sustained in law.

36. This Court also finds support from the judgment of the Hon'ble Supreme Court in **State of Kerala vs. E.K. Bhaskaran Pillai (2007) 6 SCC 524**, wherein it has been held that when an employee is wrongly denied promotion due to arbitrary or illegal action of the employer, such employee becomes entitled to notional promotion with consequential service benefits. The principle flowing from the aforesaid judgment is that once the denial of promotion is found to be unjustified, the employer cannot deny consequential notional benefits merely on technical grounds.

37. In the present case, the petitioner seeks consideration of her claim for promotion and consequential seniority from the year 2014, i.e., the date on which other judicial officers of the same batch were promoted to the post of Civil Judge Class-I (Senior Division). The respondents have failed to place any material on record to demonstrate that the denial of promotion to the petitioner in the year 2014 was in accordance with law or

that she was found unsuitable for promotion by the Departmental Promotion Committee. In fact, it is not the case of the respondents that the petitioner was ever declared unfit for promotion. The sole justification advanced by the respondents is that consideration of the petitioner's case was deferred on account of a complaint received against her.

**38.** However, it is an admitted position that no departmental enquiry was ever initiated pursuant to the said complaint, nor was any disciplinary action taken against the petitioner. It is further undisputed that after a period of approximately two years, the petitioner was promoted to the post of Civil Judge Class-I (Senior Division) vide order dated 12.08.2016 on the basis of the same service record, Annual Confidential Reports and other relevant materials which were available for consideration before the earlier DPC. No subsequent development or additional material has been brought on record to show that any circumstance existed in 2014 which rendered the petitioner unsuitable for promotion and which ceased to exist in 2016. Therefore, once the petitioner was ultimately found fit and suitable for promotion on the basis of the very same material which was available at the time of the promotion exercise conducted in the year 2014, this Court finds no justifiable reason as to why she was denied promotion when

her batchmates were promoted. Mere deferment of consideration, which was founded solely upon a complaint that did not culminate in any adverse action, cannot be permitted to operate permanently to the detriment of the petitioner's service career. The action of the respondents, therefore, does not withstand scrutiny on the touchstone of fairness and equality enshrined under Articles 14 and 16 of the Constitution of India.

**39.** Considering the aforesaid facts and circumstances of the case, this Court is of the considered opinion that the petitioner's claim for promotion and consequential seniority deserves reconsideration by the competent authority. As discussed hereinabove, the petitioner was not declared unfit for promotion by the Departmental Promotion Committee in the promotion exercise conducted in the year 2014. Her case was merely deferred on account of a complaint which admittedly did not culminate in any departmental enquiry, disciplinary proceedings or adverse finding against her. It is also an undisputed position that the petitioner was subsequently promoted to the post of Civil Judge Class-I (Senior Division) vide order dated 12.08.2016 on the basis of substantially the same service record and material which was available before the Departmental Promotion Committee in the year 2014.

**40.** In such circumstances, the matter requires reconsideration by the competent authority for examining whether the petitioner is entitled to be accorded promotion from the date on which her batchmates and other similarly situated judicial officers were promoted, namely 14.08.2014, along with all consequential benefits flowing therefrom.

**41.** Accordingly, the writ petition is **allowed**. Respondent Nos. 1 to 3 are directed to consider the case of the petitioner for grant of promotion to the post of Civil Judge Class-I (Senior Division) with effect from 14.08.2014, i.e., the date on which other eligible officers of her batch were promoted, and to examine her claim for restoration of seniority and all consequential service benefits in accordance with law.

**42.** While undertaking such exercise, the competent authority shall keep in view the observations made in the present order and shall ascertain whether any legal impediment exists which may disentitle the petitioner from claiming such benefit. In the event no such legal impediment is found to exist, appropriate orders shall be passed granting the petitioner all consequential benefits, including fixation of seniority in accordance with the applicable rules.

**43.** The aforesaid exercise shall be completed and a reasoned and speaking order shall be passed by the competent authority within a period of **three months** from the date of receipt of a certified copy of this order.

**44.** No order as to costs.

**Sd/-**

**(Amitendra Kishore Prasad)**

**Judge**

**Vishakha**