No. 62/35/98-6GSI

From

The Chief Secretary to Government, Haryana.

To

1. All Heads of Departments, Commissioners, Ambala, Hisar, Rohtak and Gurgaon Divisions.
2. All Deputy Commissioners and Sub Divisional Officers (Civil) in Haryana.
3. The Registrar, Punjab and Haryana High Court, Chandigarh.

Dated Chandigarh, the 4th, August, 1998.

Subject :—Judgement of the Apex Court in CA No. 7605-7610 of 1996 B. S. Bajwa & Another V. State of Punjab and ors.

Sir,

I am directed to enclose a copy of judgement dated 11-12-97 of the Hon'ble Supreme Court of India in delivered Civil Appeal No. 7605-7610 of 1996—B.S. Bajwa and another Vs. State of Punjab and others for your information and guidance.

Your's faithfully,
Sd/-
Under Secretary, General Administration,
for Chief Secretary to Government, Haryana.

A copy is forwarded to all Financial Commissioners/Commissioners and Secretaries to Government Haryana for information and guidance.

Sd/-
Under Secretary General Administration,
for Chief Secretary to Government Haryana.

To

All the Financial Commissioner/ Commissioners and Secretaries to Government, Haryana.

U.O. No. 62/35/98-6GSI Dated Chandigarh, the 4th, August, 1998.

Civil Aupeal Allowed

SUPREME COURT OF INDIA

J. S. Verma, CJI, B. N. Kirpal and V. N. Khare, JJ.

Civil Appeal Nos. 7605-7610 of 1996 Decided on 11th December, 1997

B. S. Bajwa and another Appellants

Versus

State of Punjab and others Respondents

For the Appellants :— Appellant-in-person,
Mr. M. L. Verma, Sr. Advocate,
Mr. T. N. Singh and Ms. Madhu Mool chandani, Advocates.

For the Respondents :— Mr. V. C. Mahajan and Mr. M. L. Verma, Senior Advocates
Mr. R. D. Bawa, Mr. P. N. Puri,
Mr. S. S. Sodhi, and Ms. Madhu Mool chandani and
Ms. B. K. Brar, Advocates.

(i) Constitution of India, Article 226 Seniority Laches—Appellants entered the department in 1971-72. Grievance made regarding seniority only in 1984-Treated all along junior to the other persons—The rights inter se had crystailed which ought not to have been reopened after lapse of such a long period—Sufficient to dismiss the writ petition on the ground of laches.

(ii) Constitution of India, Article 226—Seniority—Benefit of seniority of a much earlier date granted to appellants on the basis of concession of the Addl. Advocate General—The concession on the point being one of law cannot bind the State—It was open for the State to withdraw by filing a review petition in the High Court itself. (Para 5)

ORDER

J. S. Verma, CJI,—Delay condoned. Leave granted in SLP Nos. 23599-23600/97 (CC Nos. 8677-8678/97). CA 7605-7610/96.

These appeals by special leave are against the Judgement dated 21st December 1994 of the Division Bench in Letters Patent Appeal arising out of the judgement dated 25-4-1986 of the Single Judge in Civil Writ Petition No. 772 of 1984 which was filed in the High Court by B. S. Bajwa and B. D. Gupta. The grievance made by them was, in substance with regard to their seniority and placement in the gradation list of the department.

2. The material facts in brief are this. Both B. S. Bajwa and B. D. Gupta joined the Army and were granted Short Service Commission on 30th March, 1963 and 30th October, 1963 respectively when they were students in the final year of the Engineering Degree Course. B.S. Bajwa graduated thereafter in June, 1963 and B. D. Gupta graduated in 1964. On being released from the Army B. S. Bajwa joined the PWD (B & R) on 4-5-1971 and B. D. Gupta joined the same department on 12th May, 1972. There (sic Their) position in the gradation list was shown throughout with reference to the dates of joining the Department. It is sufficient to State that throughout their career as Assistant Engineer, Executive Engineer and Superintending Engineer both B. S. Bajwa and B. D. Gupta were shown as juniors to B. L. Bansal, Nirmal Singh, G. R. Chaudhary, D. P. Bajaj and Jagir Singh. It is also undisputed that B. L. Bansal, Nirmal Singh, G.R. Chaudhary, D. P. Bajaj and Jagir Singh got their promotions as Executive Engineer select grade and promotion as Superintending Engineer prior to B. S. Bajwa and B. D. Gupta it is obvious that the grievance, if any, of B. S. Bajwa and B. D. Gupta, to their placement below B. L. Bansal, Nirmal Singh G. R. Chaudhary, D. P. Bajaj and Jagir Singh should have been from the very inception of their career in the department, i. e. from 1971-72. However, it is only in the year 1984 that B. S. Bajwa and B. D. Gupta filed the aforesaid writ petition in the High Court claiming a much earlier date of appointment in the department. The learned Single Judge allowed the writ petition which led to letters Patent Appeal No. 424/86 being filed by B. L. Bansal, Nirmal Singh, G.R. Chaudhary, D. P. Bajaj and Jagir Singh before a Division Bench of the High Court.

3. By the impugned judgement the Letters Patent Appeal is said to have been allowed but in fact is amounts to dismissal of that LPA in as much as it granted certain benefits to B.S. Bajwa and B. D. Gupta which has the effect of making B. S. Bajwa and B. D. Gupta senior to the others by giving them a much earlier date of appointment in the department with effect from 6.4.1964 instead of 4.5.71 and 12.5.72 B. S. Bajwa and B. D. Gupta have preferred those appeals (CA Nos. 7605-7610/96) despite even with this benefit and they claimed an even earlier date of appointment

with reference to the date on which they were granted the Short Service Commission on 30th March, 1963 and 30th October, 1963. On the other hand, the grievance of D. P Bajaj and Jagir Singh filed appeal as to grant of benefit of the date 6.4.1964 to B. S. Bajwa and B.D. Gupta because it affects their seniority in the cadre and would also adversely affect their prospects in spite of their earlier promotion to the cadre of Executive Engineer and Superintending Engineer.

4. It is significant that the Division Bench in the LPA, while dealing with the question of aches in filing the writ petition came to the following conclusion :

> "It is not disputed that in the confirmation list of P.W.D. (B&R) Branch published from time to time, the writ petitioners were shown junior than the appellants herein. No document has been produced on the record to show that they had ever objected to their position in the gradation list or prayed for the grant of the benefits claimed by them in the writ petitions filed in this Courts.
>
> It also cannot be denied that the acceptance of the writ petition would adversely affect the service conditions of the in service employees like the appellants by altering their seniority and putting them to disadvantageous position. Administrative instructions or the Rules could not be altered to their disadvantage. The Intention of the Rule making authority is not so clear as to unambiguously hold the intention for conferment of the benefits in favour of the writ petitioners."

5. Obviously on this conclusion alone the writ petition should have been dismissed by setting aside the judgement of the Single Judge allowing the LPA without any caveat. However, the Division Bench, after reaching the above conclusion, proceeded to grant the benefit of a much earlier date, namely, 6.4.1964 as the date of appointment on the basis of a concession of the Additional Advocate-General made therein without considering the effect of the same or of taking into account the inconsistency with its earlier finding. We have no doubt that the concession on this point being one of law, it cannot bind the State and, therefore, it was open to the State to withdraw as it has been done by filing a review petition in the High Court itself. That a part that connection made on behalf of the State cannot bind D. P. Bajaj and Jagir Singh or anyone else who would be adversely affected thereby. Those persons, therefore, have an independent right to assail that view taken by the Division Bench. It is with regard to this part of the judgement of which we say that even though the LPA is said to have been allywed but it has the effect and in reality of being dismissed because it grants certain benefits to B. S. Bajwa and B. D. Gupta who were the respondents therein.

6. Having heard both sides we are satisfied that the writ petition was wrongly entertained and allowed by the Single Judge and, therefore, the judgements of the Single Judge and the Division Bench have both to be set aside. The undisputed facts appearing from the record are alone sufficient to dismiss the writ petition on the ground of laches because the grievance made by B.S. Bajwa and B. D. Gupta only in 1984 which was long after they had entered the department in 1971-72. During this entire period of more than a decade they were all along treated as junior to the other aforesaid persons and the rights inter se had crystallized which ought not to have been re-opened after the lapse of such a long period. At every stage the others were promoted before B. S. Bajwa and B. D. Gupta and this position was known to B. S. Bajwa and B.D. Gupta right from the beginning as found by the Division Bench itself. It is well settled that in service matters the question of seniority should not be re-opened in such situation 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 grievances. This alone was sufficient to decline interference under Article 226, and to reject the writ petition

In view of the above conclusion it is not necessary for us to express any opinion on the merits of the point raised by B. S. Bajwa and B. D. Gupta. We make it clear that the view thereon taken by the High Court is not to be treated as concluded or having affirmation of any kind. The appeals of B. S. Bajwa and B. D. Gupta are dismissed and the appeal filed by D. P. Bajaj and Jagir Singh is allowed. With the result that the Judgement of the Single Judge of the High Court is set aside and the writ petition filed by B. S. Bajwa and B. D. Gupta stand dismissed.

CA 7611-7614/96

8. For the reasons stated above, these appeals are dismissed.

CA Nos. 8914-15/97 in SLP (C) No. 23599-23600/97

(CC Nos. 8677-8678/97)

For the reasons stated above, these appeals are allowed.

Ordered accordingly.