FULL BENCH

Before : *M. M. Punchhi, Ujjagar Singh and A. P. Chowdhri, JJJ.*

PUNJAB STATE ELECTRICITY BOARD, PATIALA AND ANOTHER,—*Appellant.*

versus

ASHOK KUMAR SEHGAL AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 402 *of* 1988

July 13, 1989.

Constitution of India, 1950—*Article* 14, 16, 141 *and* 226—*Punjab Public Works Department (Electricity Branch) Provincial Service Class III (Subordinate Posts) Rules* 1952—*Rules* 6 *and* 9—*Promotional posts of Line Superintendents—Dispute* inter se *between diploma holders and non-diploma holder. Linesmen—Promotion based on quota rules struck down by Supreme Court—Quota rules consequently abolished by PSEB—Right to promotion—Whether based on eligibility—Senior-most eligible lineman be it diploma holder or a non-diploma holder—Whether has a right to promotion on seniority.*

Held, that seniority *per se* cannot be intended to be taken as the basis for promotion, as, otherwise, it would lead to undesirable results. If it is to be dealt otherwise, it would lead to breeding of manipulations, machinations, calculations and caprice. Having regard to the requirements of promotional posts and in the interests of efficiency of service, the eligibility criteria is the first dominent factor and thereafter comes the principle of seniority governing the fate when two equal eligibles stake claim to the promotional post. In that situation the senior person would get the promotional post on both acquiring eligibility on the same date, even though the promotional post falls vacant later. Therefore, we wish to emphasise here that seniority alone is not the basis for promotion from the post of Linesman to the post of Line Superintendent.

(Para 35)

Held, that before a writ petition can succeed on the basis of *Ravinder Kumar Sharma's case* (supra) he must positively allege not only his seniority number on the seniority list but also as to when did he acquire eligibility for promotion and when, was the post available which he could claim. Additionally, he would have to implead the persons who got that promotional post in each violation of the rights of the writ petitioner and on what basis i.e. when did they become eligible for the post etc. The writ petition cannot be maintained on vague allegations, or on the bare allegation that as per the seniority list the writ petitioner was senior to

the ones who were promoted as Line Superintendents. The Hon'ble Single Judge was unfortunately not advised on this aspect of the case and that is the reason that the principle of seniority-cum-merit was ordered to be applied in the case of all the writ petitioners.

(Para 36)

Held, that the case of the writ petitioners in seeking implementation of the judgment in Ravinder Kumar Sharma's case, too appears to us misconceived. As said before, the law declared therein and the ratio decidendi emerges for all but the implementation of the judgment is meant for the parties. The writ petitioners can at best seek *application* of the law declared by the Supreme Court and cannot in that attempt even ask redeclaration of the same. They cannot be permitted to say now that in their cases too the quota rule be declared abolished. And then ask for the consequences like those followed in Ravinder Kumar Sharma's case. The writ petitioners can at best seek relief under the declared law, which the Court may in its discretion grant or not. This would be the right position in law.

(Para 37)

Held, that the claim of the writ petitioners for retroactive application, treating the quota rule as *non est*, would lead to shrinkage of promotional quota both in the categories of diploma holders and non-diploma holders, for, as said before, they are an admixture of gainers and losers.

(Para 38)

Held, that if the clock is put back reshuffling and readjusting the promotional process governing two decades, it would be a nerve-wrecking and never ending exercise involving numerous persons, alive or dead, in and out of service, further promoted or retired. This aspect cannot easily be ignored.

(Para 38)

Held, the mere existence of a Supreme Court decision in favour of a writ petitioner does not *ipso facto* mean that he can get the relief from a High Court.

(Para 52)

Constitution of India Article 226—Laches—Delay—Claim for pre-dated promotion—Challenge to Rule made after 10 years—Petition suffers from laches—No entitlement to relief.

Held, that the unexplained delay of 10 years in challenging the significance of quota Rule in 1970 assumes significance when we know and can conceive what would have transpired in that decade and how many innocent Line Superintendents would have become entitled to sit back and consider that their appointments and promotions effected a long time ago would not be set aside after a lapse of a number of years. Thus, on this ground also Ashok Kumar Sehgal should have been denied the relief.

Held, that :

(a) The petitioner cannot succeed only on the ground that he was senior to his juniors who were promoted as Line Superintendents;

(b) The petitioner cannot succeed on his petition because it sugers from lack of particulars and vagueness, having not stated when did he acquire eligibility for promotion, when did his juniors acquire eligibility for promotion, when did the promotional post/posts fall vacant which he was deprived of and on what basis?

(c) The petitioner cannot succeed for having not impleaded the parties affected thereby, if he was to be given promotion from a back date, and more particularly in the absence of Ramesh Kumar, the junior suggestedly promoted earlier to him;

(d) The claim of the writ-petitioner is stale and an effort to unsettle settled matters and would be inequitous to disturb those who sit back and consider that their appointments and promotions effected a long time ago would not be upset after a lapse of a number of years;

(e) The petitioner cannot succeed since rights of other parties have come into existence and this Court harm innocent parties since those rights have emerged by reason of delay on the part of the writ petitioners;

(f) The writ-petitioners could only claim applicability of the law laid down in Ravinder Kumar Sharma's case and not relief by way of implementation thereof;

(g) Lastly, the writ petitioners cannot succeed on the basis of comperative equities, since in the event of relief as claimed being granted to them, the Board would be put to an onerous burden, which burden would ultimately fall on the public and it is ultimately the tariff payer or electricity consumer who would be punished for none of his fault.

(Para 60)

(This case was referred by a Division Bench consisting of Hon'ble the Chief Justice and Hon'ble Mr. Justice G. R. Majithia, to be heard by the Full Bench. The Full Bench by its order dated 13th July, 1989 has since disposed of L.P.A. 402-88 along with other connected matters.)

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of the Hon'ble Single Judge passed in Civil Writ Petition No. 1903 of 1987 decided on 25th January, 1988 praying that the appeal may kindly be accepted, judgment of the Hon'ble Single Judge be set aside and the writ petition be dismissed, with costs.

H. L. Sibal, Sr. Advocate with J. P. S. Sandhu, Advocate, *for the appellants.*

J. L. Gupta, Sr. Advocate with Mr. Bhim Sen Sehgal, Advocate,

Miss Nirmaljit Kaur, Advocate and Mr. S. S. Nijjar Advocate, *for the respondents.*

JUDGMENT

M. M. Punchhi, J.

(1) These 23 matters are indeed an assortment having common axis in Letters Patent Appeal No. 402 of 1988 which has arisen from a judgment rendered by M. R. Agnihotri, J., a learned Judge of this Court, in CWP No. 1903 of 1987 (*Ashok Kumar Sehgal* v. *The Punjab State Electricity Board and others*) decided on January 25, 1988. The Division Bench hearing LPA No. 402 of 1988 referred it to be heard by a Full Bench. And the other matters were tagged therewith to be heard by the Full Bench. This is how these matters have been placed before us.

(2) At the very outset, we would venture to arrange these matters for facility of disposal in the following categories :

(1) *LPA No. 402 of 1988 itself.*—This Letters Patent Appeal has been preferred by the Punjab State Electricity Board (hereafter referred to as the Board) against the judgment and order passed in CWP No. 1903 of 1987 decided on January 25, 1988.

(2) *Matters directly connected with LPA No. 402 of 1988.*—These are LPA Nos. 403 to 411 of 1983 and LPA No. 309 of 1988 which have been preferred by the Board against the common judgment and order as passed in CWP

Nos. 497, 1440, 1716, 1806, 1812, 1942, 2476, 2609 and 3145 of 1987, which were allowed along with CWP No. 1903 of 1987.

LPA No. 309 of 1988 has been preferred by a losing party-respondent in CWP No. 1903 of 1987.

LPA No. 547 of 1988 is also against the decision in CWP No. 1903 of 1987 and has been preferred by the Punjab State Electricity Board Diploma-holders Association after obtaining leave of the Court, since it was claimed that neither the Association-Appellant nor majority of its diploma-holder members had been impleaded as respondents in the said writ petition.

(3) *Matters identical with LPA No. 402 of 1988.*—CWP No. 1637 of 1979 was allowed by J. V. Gupta, J., another learned Single Judge of this Court, on May 25, 1988, relying on the decision in CWP No. 1903 of 1987.

LPA No. 661 of 1988 has been preferred by the Board against the said judgment and order.

In CWP Nos. 1816, 1817 and 1845 of 1987 the same relief is sought as in CWP No. 1903 of 1987.

(4) *Matters militating against LPA No. 402 of 1988.*—CWP No. 3085 of 1988 is preferred by 485 petitioners claiming that the decision in CWP No. 1903 of 1987 be not put to effect as that would lead to the demotion of the petitioners.

CWP No. 4138 of 1988 is also to the same effect in which 38 writ petitioners claim identical relief. This petition, however, is at the motion stage and has been listed for disposal.

(5) *Matters which are admixtured on which the shadow of LPA No. 402 of 1988 broods.*—CWP No. 1599 of 1985 was dismissed by D. V. Sehgal, J., another learned Single Judge of this Court, on the strength of his earlier decision in *Jatinder Singh* v. *P.S.E.B.*, 1986(1) S.L.R. 693.

LPA No. 283 of 1988 is against the said judgment and order.

The other matters which are dependent on the aforesaid case are CWP Nos. 363, 811, 1744 and 3450 of 1987.

(6) *Other entangled matters.*—These would be seen as the judgment proceeds.

(3) Thus, in all we have 23 matters which are being disposed of sequentially by a common judgment.

(4) The facts giving rise to LPA No. 402 of 1988 are these.

(5) The writ petitioner Ashok Kumar Sehgal has to his credit educational qualification of being Higher Secondary pass. He joined the Punjab State Electricity Board as an Assistant Lineman on July 8, 1966. He was promoted to the post of Lineman on January 25, 1973. In the seniority list of Lineman as it stood on August 31, 1974, his number was 2078. He was continuing on that post when he approached this Court by means of CWP No. 1903 of 1987, complaining, *inter alia*, that some of his juniors had been promoted as Line Superintendents, some of whose names he gave in paragraph 7 of the petition, and those promotions were illegal because of the law laid down by the Supreme Court in the *Punjab State Electricity Board, Patiala and another* v. *Ravinder Kumar Sharma and others* (1). He prayed, *inter alia*, for reliefs of implementation of the judgment of the Supreme Court in *Ravinder Kumar Sharma's* case (supra) retroactively, not only in his case but also in cases of persons similarly situated irrespective of the fact whether such employees had approached the Court or not.

6. The petitioner additionally projected that the conditions of service of the petitioner were to begin with governed by the Punjab Public Works Department (Electricity Branch) Provincial Service Class-III (Subordinate Posts) Rules, 1952, made by the Governor of Punjab in exercise of the powers conferred by Article 309 of the Constitution of India. Later, when the Punjab State Electricity Board was established under section 3 of the Electricity (Supply) Act, 1948, the same set of rules continued to govern the conditions of service of the petitioner even after coming into existence of the Board. According to the aforesaid service rules, promotions from

(1) A.I.R. 1987 S.C. 367.

the post of Linesman to the post of Line Superintendent (now designated as Junior Engineer-II) suggestedly are to be made on the basis of seniority-cum-merit (though there is nothing specific in that regard in the Rules) and the only qualification for being a Linesman prescribed by the rules is that of matric. On the basis of these rules, persons who were posted as Linesman and were matriculates, had been receiving promotions when the Electricity Department was under the State Government prior to the coming into existence of the Board. Later, on the formation of the Board in the year 1959, this position continued right uptill 1970 when the quota system for promotion to the cadre of Line Superintendent was introduced gradually. On the striking off of such quota rule by the Supreme Court in Ravinder Kumar Sharma's case the petitioner and other persons similarly situated made representations to the Board for extending the same benefit to them. The petitioner represented that he may be promoted retrospectively to the post of Line Superintendent on the basis of seniority-cum-merit with effect from July 12, 1977, as according to him that was the date when his junior Ramesh Kumar was promoted as Line Superintendent. Since the Board did not do so and was about to make further promotions, the petitioner, Ashok Kumar Sehgal, sought the relief asked for. Same was the relief sought in the connected petitions.

(7) M. R. Agnihotri, J. focussed that the point for determination was whether the Board is duty bound to implement the judgment of the Supreme Court in Ravinder Kumar Sharma's case in case of Ashok Kumar Sehgal and other writ-petitioners in other cases and all other employees similarly situated. On that basis commonality of questions of fact and law was treated as involved in all the connected writ petitions. Taking the view that this Court was just to implement the judgment of the Supreme Court in Ravinder Kumar Sharma's case, M. R. Agnihotri, J. allowed the writ petition granting relief not only to the writ-petitioner but to others as well in directing the implementation of the judgment of the Supreme Court in the aforesaid case not only in his case but also in cases of persons similarly situated irrespective of the fact whether such employees had approached the Court or not; directing the Board to remove the effect of quota system in terms of the aforesaid case with regard to each and every Lineman by revoking the promotions of others who had suppressed the claims of their seniors; and further directing the Board to consider the petitioner and other Linemen on the basis of seniority-cum-merit for the posts of Line Superintendents and on such consideration if he and the Linemen are found

suitable for promotion, then promotion be given to them retrospectively with effect from the date their juniors were promoted and finally to grant them the consequential relief of arrears of salary and fixation of pay etc. on the said basis.

(8) The aggrieved Board on preferring LPA No. 402 of 1988 persuaded the Motion Bench comprising of S. S. Kang and S. D. Bajaj, JJ. on April 22, 1988, in granting stay of the operation of the impugned judgment in the meanwhile. The said order was passed in the presence of the parties' counsel. The same order was repeated in the connected LPAs.

(9) A dramatic development took place in the meantime which is worthy of immediate notice.

(10) Kuldip Singh and 13 others linemen of the Board filed CWP No. 8167 of 1987 claiming identical relief on the strength of Ravinder Kumar Sharma's case (supra). On February 10, 1988, in the presence of the counsel for the parties, the Motion Bench comprising of G. C. Mital and S. D. Bajaj, JJ. allowed the writ petition by passing the following order :

> "After considering the matter, we are of the view that the facts of this case are identical with the facts of CWP No. 1903 of 1987 (Ashok Kumar *v.* P.S.E.B.) decided by M. R. Agnihotri, J. on 25th January, 1988. Accordingly this petition is allowed in the same terms.
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> (Sd.)
>
> Gokal Chand Mital,
> *Judge.*
>
> (Sd.)
>
> February 10, 1988. S. D. Bajaj,
> Judge."

(11) The Board filed a Special Leave Petition No. 11506 of 1988 against the judgment and order dated February 10, 1988, passed in CWP No. 8167 of 1987. The Special Leave Petition was dismissed by the Supreme Court on December 15, 1988.

(12) The Punjab State Electricity Board Diploma Engineers Association then moved a miscellaneous application No. 14232 of 1988 in SLP No. 11506 of 1988 so as to disturb the order passed on December 15, 1988, in the said SLP. The Civil Misc. application of the Association was dismissed by the Supreme Court on January 11, 1989, by observing as follows :

> "The Civil Misc. petition is dismissed. It is contended that the petitioners were not parties before the High Court. It is open to them to approach the High Court by way of appropriate remedy."

The Association then made Review Application No. 27 of 1989 in CWP No. 8167 of 1987 in this Court praying that the Association be permitted to become a party to the case and the case be decided afresh after hearing the Association etc. Before-hand this Bench was apprised on January 24, 1989, when it met to take up these cases, that such a review application was about to be filed. This Bench was also particularly made aware that the Association had been allowed to file Letters Patent Appeal No. 547 of 1988 against the decision of the Single Bench in Ashok Kumar Sehgal's case (supra). Noting these facts, this Bench adjourned the matter. The review petition then came up for hearing before the Division Bench consisting of G. C. Mital and S. D. Bajaj, JJ. on March 10, 1989 in the presence of the parties' counsel and the review application was dismissed by passing the following order:

> "The applicant is the Diploma holders association and is seeking review of our order dated 10th February, 1988 on the ground that the association was necessary party but was not impleaded in the writ petition. Factually, the matter is correct. A bunch of similar writ petitions had earlier been decided by M. R. Agnihotri, J. on 25th January, 1988 and in some of the writ petitions, some of the Diploma holders got impleaded as respondents and after hearing the view points of the Diploma holders and non-Diploma holders, the decision of the Supreme Court in AIR 1987 S.C. 367 was followed, because the *inter se* dispute between these groups was decided by the Supreme Court, and this Court was merely to implement it, which was so ordered by M. R. Agnihotri, J. Since the decision of the Supreme Court was followed by M. R. Agnihotri, J.

and facts before us being the same, we followed that decision and gave relief to the non-Diploma holders linemen."

(13) Against the decision of M. R. Agnihotri, J. Punjab State Electricity Board had got its LPA admitted. The Diploma holders' association filed separate LPA with leave to file and it was granted leave and the LPA has been admitted. Therefore, the controversy between the Diploma holders and non-Diploma holders is in LPA, which is now referred to Full Bench, and whatever decision is rendered therein, would be binding on the Diploma holders and non-Diploma holders.

Under the circumstances of the case, no case for review is made out. The application along with the application for condonation of delay are dismissed.

March 10, 1989.

(Sd.) G. C. MITAL,
(Sd.) S. D. BAJAJ,
Judges."

This is the entangled matter we have in mind under category No. 6.

(14) At the very threshold, this dramatic event of the Supreme Court declining Special Leave in Kuldip Singh's case has been put as a bar against our examining the matter, as it has been contended that Ashok Kumar Sehgal's case (supra) met with approval by the Division Bench in Kuldip Singh's case and, then in order Kuldip Singh's case has been given the seal of approval by the Supreme Court. It is asserted that on that basis LPA No. 402 of 1988 deserves straightway dismissal and other cases to abide by its fate.

(15) The matter is not that simple the way it is projected. Before venturing to deal with this objection, it would be useful to take note of some doings of the Board and the litigious history it made leading to Ravinder Kumar Sharma's case (supra), which we chronologically record hereafter.

(16) The Board was constituted in the year 1959. It had taken over employees from the P.W.D. Electricity Branch from the State of Punjab. It made its own appointments too. In the matter of recruitments, it had prescribed qualifications for various posts. The Board resorted to a quota system between the employees of the same

cadre or class for the purpose of promotion to the higher posts on the basis of higher qualifications. The question cropped up in this Court as to whether the fixation of such quota was derogatory to the fundamental right of equality before law. Two Civil Writ Petitions Nos. 1926 of 1973 and 3552 of 1974 were preferred by non-diploma holder Line Superintendents, challenging the promotion of the diploma-holder respondents on the basis of the quota rule, on the ground that the petitioners as also the respondents were in the same cadre, discharged same functions and duties as Line Superintendents and had identical pay-scales and yet the respondents on the basis of quota rule, were promoted as Junior Engineers by the Board, which action was violative of Articles 14 and 16 of the Constitution. A learned Single Judge of this Court dismissed these petitions. The Letters Patent Bench, however, on May 5, 1980, allowed the appeal on the basis of the judgment of the Supreme Court in *Mohd. Shujatali and others* v. *Union of India* (2). That judgment is *Sukhdev Raj Sharma and others* v. *Punjab State Electricity Board and others* (3). The Bench took the view that if the Board thought it fit as a matter of policy taking into consideration all factors that non-diploma-holder Line Superintendents were fit enough to perform the duties of Junior Engineers after promotion, there was absolutely no warrant or justification to debar them from competing with their counterparts having diploma as their qualification on the basis of equality and parity.

(17) Having suffered defeat in *Sukhdev Raj Sharma's case* (supra) on May 5, 1980, the Board had to meet another litigation of the same kind but in an ordinary Civil Court. One Ravinder Kumar Sharma, on July 17, 1980, filed a suit for declaration challenging two orders dated July 12, 1977 and August 17, 1977, promoting respectively the arrayed defendants Nos. 3 to 7 from the posts of Linemen to the posts of Line Superintendents, ignoring the claim of the plaintiff who was statedly senior to the named defendants Nos. 3 to 7. He claimed that the promotions were illegal, unconstitutional, discriminatory, arbitrary etc. The suit of Ravinder Kumar Sharma was decreed and he was declared to have been promoted from the date when his juniors arrayed as defendants Nos. 3 to 7 were promoted to the posts of Line Superintendents. Board's appeal was dismissed by the Additional District Judge, Patiala, though in his judgment observed that Ravinder Kumar Sharma had only a right to be considered for promotion on the date when his juniors were promoted and

(2) AIR 1974 SC 1631.
(3) 1980 (31 SLR 75).

not the right to promotion straightaway. However, since he had also held that the appeal had not been signed by a competent person, he dismissed the appeal and it was apparently for that reason that the decree prepared by the Additional District Judge did not incorporate the amendment in the declaration to the effect that the plaintiff had only the right to be considered for promotion on the date when his juniors were promoted. RSA No. 254 of 1983 preferred by the Board was dismissed *in limine* by a learned Single Judge of this Court on January 25, 1983, by a short speaking order in view of *Mohd. Shujatali's case* (supra), and *Sukhdev Raj Sharma's case* (supra). The Board's Civil Revision against the order of the Additional District Judge, Patiala, declining to correct the decree prepared by him in order to bring it in accord with the judgment, was dismissed *in limine* by a learned Single Judge of this Court on February 14, 1984. This Court being a Court of Record under Article 215 of the Constitution did have access to the original records in *Ravinder Kumar Sharma's case.*

(18) Now the Board had two matters in hand to be fought in the Supreme Court i.e., *Sukhdev Raj Sharma's case* and *Ravinder Kumar Sharma's case.* The Board sought and was granted Special Leave to Appeal in Sukhdev Raj Sharma's case as also in the connected case since there were two writ petitions. These appeals were numbered as 2007 and 2008 of 1980. An interim order was granted by the Supreme Court on September 15, 1980, in these appeals that promotions already made will not be disturbed but future operation of the judgment was suspended. It was ordered that any promotions which may be made hereafter would abide by the judgment of that Court. In *Ravinder Kumar Sharma's case* too the Board sought and was granted Special Leave to Appeal against the decision of this Court in RSA No. 254 of 1983. It also sought Special Leave to Appeal against the dismissal of GR No. 407 of 1984. That apparently was ordered to be heard with the appeal against the main judgment.

(19) Civil Appeals Nos. 2006 to 2010 of 1980 (inclusive of Nos. 2007 and 2008 of 1980) were disposed by a Bench comprising of three Hon'ble Judges of the Supreme Court, observing as follows:

> "After the hearing of the appeals had gone on for some time, it transpired that all the petitioners in writ petitions before the High Court have since been promoted as Junior Engineers. The main grievance of the petitioners

was as regards the fixation of quota for promotion as Junior Engineers and that question is no longer a live issue. That is the only question involved in the appeals and the question has become purely academic. It also appears that some affected persons who were junior to the petitioners but had been promoted as Junior Engineers, had not been impleaded as party-respondents in the writ petition. As such no relief could be claimed against them in so far as question of seniority was concerned.

That being so, we do not think it expedient to express any opinion on the validity or otherwise of the quota fixed as between diploma holder and non-diploma holder Line Superintendents for purposes of promotion as Junior Engineers in these appeals. All questions are left open including the question of seniority.

In view of the fact that the petitioners have since all become Junior Engineers, the appeals have become infructuous and are accordingly dismissed with no order as to costs.

We express no opinion as to the correctness or otherwise of the rights and contentions of either parties.

Sd7-

A. P. Sen, J.

Sd7-

E. S. Venkataramiah, J.

Sd7-

B. C. Ray, J."

18-2-1986

(20) The Board's appeal and Special Leave Petition thereafter were dismissed in Ravinder Kumar Sharma's case on 27th October, 1986. The Board then entertained a doubt about the promotions it had

already made and which promotions under interim orders of the Court, dated September 15, 1980, in Sukhdev Raj Sharma's case were ordered to remain undisturbed. It thus sought directions from the Court in that regard and also about the law applicable, The same Bench then passed the following order on January 30, 1987 :

> "These applications for directions by the State Electricity Board appear to be wholly misconceived. The *ad interim* order dated September 15, 1980 which left undisturbed the promotions already made, was an interim order and it came to an end with the dismissal of the appeals being C.A.Nos. 2006-10/86 by the Court's order dated February 18, 1986 as being infructuous. The Court expressed no opinion as to the validity or otherwise of the quota rule since all the petitioners in the writ petition before the High Court had in the meanwhile been promoted as Junior Engineers and all legal contentions kept open. This question came for up consideration in the subsequent decision of this Court in *Punjab State Electricity Board, Patiala* v. *Ravinder Kumar Sharma*, 1986 (4) SCC 617 which lays down that the fixation of a quota as between diploma-holders and non-diploma-holders Line Superintendents for purposes of promotion, who were integrated into a common cadre by the State Electricity Board, was wholly arbitrary and irrational and therefore, violative of Article 14 of the Constitution. Such being the legal position, we find no justification for the State Electricity Board expressing its doubt and difficulty as to the law applicable.
>
> The applications for directions are accordingly dismissed."

(21) This completes the litigious history. Now we go over to the report in Ravinder Kumar Sharma's case. We have seen from the original trial Court record in Ravinder Kumar Sharma's case and as is apparent from the report also, the trial Court, lower appellate Court and the High Court proceeded on the basis that the plaintiff-Ravinder Kumar Sharma was senior to defendants Nos. 3 to 7 and his claim for promotion was based just on that. Defendants Nos. 3 to 7 had not contested the suit and the only contestant was the Board. It is at the Supreme Court stage that the

affected defendants also obtained the Special Leave to Appeal against the judgments of the Courts below and with their aid the matter was highlighted in the Supreme Court. It is not difficult to discern from the facts as stated in paragraphs 2 and 3 of the report that Ravinder Kumar Sharma had become a Lineman from December 29, 1969 (inclusive of his one year's service as Apprentice Lineman) had become eligible to be promoted with effect from December 28, 1973 and the promotion which he was challenging took place much later on July 12, 1977 and August 17, 1977. The Supreme Court in paragraph 8 of the report focussed its attention to the impugned orders, fully alive to the relevant eligibility criteria, by observing as follows :—

"8. The only issue raised in this appeal is whether defendant 1, that is, the Punjab State Electricity Board, is competent to discriminate between diploma holders and non-diploma holders Line Men forming the common cadre of Line Men having a common seniority list in promoting these line men on the basis of quota fixed by the order of the State Electricity Board *even though the requisite qualification for promotion for Line Men to the post of Line Superintendent is either the holding of diploma* or certificate for electrical engineering from a recognised institute or the non-diploma holders having passed one and half year's course in the trade of Electrician/Line Man/Wire-Man from recognised Industrial Training Institute and are matriculates and have worked for four years as Line Man continuously and immediately before promotion, as has been provided by the office order No. 97/ENG/BET/G-33 dated 22nd October, 1968 the relevant excerpt of which is quoted herein below :

(words emphasised by us)

"For Direct Recruitment :

(a) Possess 3 years' certificate or diploma course in Electrical Engineering from any recognised Institute, or a certificate of having passed the N.C.C. Test conducted by the State Board of Technical Education/ All India Council for Technical Education.

(b) Have passed action (examination?) of the Institution of Engineering (India) Exam with Elementary Electrical Engineering as the optional paper.

For promotion

(c) (i) Have passed 1½ years' course in the Electrical Trades of Electrician/Line Man/Wire Man from recognised Industrial Training Institute and are matriculates and have worked for 4 years as a Line Man continuously and immediately before promotion.

(ii) Have passed 1½ years' course in the Electrical Trades of Electrician/Line Man/Wire Man from recognised Industrial Training Institutes and are non-matriculates but are capable of preparing estimates, writing up measurement books accurately, keeping store accounts etc. and have worked for 4 years as a Line Man continuously and immediately before promotion.

(iii) Persons holding diploma in Electrical Engineering of 3 to 4 years duration recruited as Line Man against the reservation of 60 per cent fixed for recruitment of persons holding certificate of 1½ years' course in the Electrical Trades of Electrician/Line Man/Wire Man from recognised Industrial Training Institutes have worked as Line Man for 3 years continuously and immediately before promotion. On promotion as Line Superintendent they will be given weightage of 2 years' service as compared to non-diploma-holders, at the time of fixation of their seniority and pay in accordance with the instruction contained in Board's Memo No. 88774/84/BET/(33)L dated 29th December, 1967.

(d) (i) Matriculates Line Man having a total continuous service of 9 years as at A.L.M. and Line Man out of which they should have worked as Line Man for 4 years continuously and immediately before promotion.

(ii) Non-matriculates Line Man having a total continuous service of 11 years as A.L.M. and Line Man out of

which they should have worked as Line Man for four years, continuously and immediately before promotion, provided they are capable of preparing estimates, writing up measurement books accurately keeping store accounts and in addition are conversant with Consumer Accounts or possess a special experience for transmission line work."

Further, in paragraph 10 of the report, it observed as follows :

".... .It is also clear and evident from the office Order No. 97 dated 22nd October, 1968 that the qualification for promotion to the post of Line Superintendent from Line Man is either holding certificate or diploma in electrical engineering from any recognised institute or having passed 1½ years' course in the electrical trade of Electrician/Line-Man Wire Man from recognised Industrial Training Institute and are matriculates and have worked as Line Man for four years continuously and immediately before the promotion. *The petitioner who is an Arts Graduate and has I.T.I. Certificate (in the trade of electrician 2 years' duration) and also have National Apprentice Certificate in the trade of Line Man 3 years' duration is eligible for promotion to the post of Line Superintendent as he has fulfilled all the requisite qualifications.*"

(Emphasis supplied)

On the finding that the plaintiff was eligible for promotion on the basis of the eligiblity criteria set out above, and admittedly *vis-a-vis* defendants Nos. 3 to 7 senior, was the relief granted by the trial Court maintained. Significantly in the later part of paragraph 10 of the report their Lordship have observed :

".....The orders dated 12th July, 1977 being order No. 73 promoting defendants 3, 4 and 5 as well as Office Order No. 898 dated 17th August, 1977 promoting defendants 6 and 7 on the basis of quota from diploma holders as fixed by the order of the State Electricity Board dated 9th May, 1974 is wholly arbitrary, illegal, discriminatory and violative of the equality clause contained in Arts. 14 and 16 of the Constitution inasmuch as it purports to promote

defendants 3 to 7 who are *admittedly* Junior to respondent 1 in service as Line Man in the State Electricity Board."

(Emphasis supplied)

(22) Since on the admitted facts the plaintiff, Ravinder Kumar Sharma, was evidently senior to defendants 3 to 7 and on the basis of the eligibility criteria prescribed by means of office order dated December 22, 1968, extracted above, was eligible on the dates his Juniors were promoted, the judgments and decrees of the Courts below were affirmed. Had there been any contest on those facts and the material on the file was deficient, the plaintiff's case could possibly have been remanded but instead was considered for promotion on admissions made by the parties right there, and he was thus held entitled to promotion with effect from the date his junior had been promoted. We have also taken care to see from the original record as to whether the question of eligibility and the criteria laid for the purpose ever came into consideration in both the Courts below. It is significant to find that this aspect of the case was never projected before the Court below by either party. It appears to have been highlighted by defendants 3 to 7 and the Board in support of their appeals for the first time in the Supreme Court. The eligibility criteria embodied in Office Order dated December 2, 1968, lay down conditions for eligibility for Linemen seeking promotion to the posts of Line Superintendents, in the nature of things, was patiently accepted and latently approved as valid by the Supreme Court. Had it not been so there was no need to have the said office order figure prominently in the rendered judgment and the acquiring of eligibility of Ravinder Kumar Sharma highlighted and emphasised. The seniority list, Exb. P-on the trial Court file too discloses that Ravinder Kumar Sharma having been appointed a Lineman on December 29, 1969, was senior to defendants 3 to 7. It also discloses that he had acquired eligibility for promotion on December 29, 1972, and on the other hand, Gurdial Singh and Jaswant Singh defendants had acquired eligibility for promotion on August 4, 1973 and September 2, 1973, respectively, later than him. The remaining defendants also acquired eligibility for promotion later. Since the promotions took place on July 12, 1977 and August 17, 1977, and on that day the plaintiff and the affected defendants were all eligible for promotion Ravinder Kumar Sharma being the senior-most, was entitled to promotion to the post of Line Superintendent which obviously was withheld from him on the application of the quota rule. It is in this light,

as we now understand, that Ravinder Kumar Sharma's case was decided. On such view having been taken in the main case, the suggested discrepancy between the judgment and decree of the lower appellate Court about whether he should be deemed to be promoted or considered for promotion; subject matter of SLP No. 2693 of 1984 against the judgment and order dated February 14, 1984, passed in Civil Revision No. 407 of 1984 by this Court, was left unresolved and the Special Leave Petition was dismissed.

(23) So, when culled out, the binding ratio in Ravinder Kumar Sharma's case is :

(i) The fixation of quota for promotion as between Diploma-holders and Non-diploma-holders Linemen, who were integrated into a common cadre by the Board, was wholly arbitrary and irrational, violating Article 14 of the Constitution ;

(ii) In the promotional quota of Line Superintendents (as contrasted with direct recruits) both the diploma-holder and non-diploma-holder, seeking promotion to the post of Line Superintendent, must first be eligible on the basis of the eligibility criteria embodied in Office Order dated December 2, 1968 ;

(iii) The senior-most eligible Lineman, whether a diploma-holder or a non-diploma-holder, is entitled to be promoted to the post of Line Superintendent ; (normally) and deducedly ;

(iv) The relevant date for consideration for promotion shall be the date on which the promotional post fell vacant.

This ratio is 'declared law' under Article 141 of the Constitution. These culled out principles of law alone are declaratory for the nation. What remains has been left for the parties. The orders of the Supreme Court are enforceable under Article 142 of the Constitution and the Code of Civil Procedure. The effective order of the Supreme Court, whereunder justice was done to the parties. is binding on the parties. In other words, questions as to seniority, deemed promotion etc. etc. decided in favour of Ravinder Kumar

Sharma is not in the nature of a binding ratio so as to bind Courts in future to regulate the relief always on those lines. The reasoning of one decision cannot be applied in another case in the absence of similarity of situation or circumstances. It is also worthy of notice that Ravinder Kumar Sharma opted for the ordinary remedy of a suit for declaration and instituted the suit within the period of limitation. No question of neglect, delay or laches could enter in such a situation. The Supreme Court granted the relief to Ravinder Kumar Sharma after declaring the law by means of its judgment and that judgment is not to be construed as an Act of Parliament. It is to be read in the context of the questions which arose for consideration in the case.

(24) If a High Court allows Civil Writ Petitions by a common judgment declaring an Act as unconstitutional, but the State appeals to the Supreme Court only in one of the petitions, and the Supreme Court in that appeal upholds the validity of the Act, sets aside the judgment of the High Court, the law declared by the Supreme Court would in view of Article 141, be binding upon all the petitioners before the High Court and not merely to a particular petitioner as against whom the State had preferred the appeal. This view has been taken in *Amman* v. *State of Karnataka* (4). This means that it is not necessary for everyone to be a party to a litigation in which the Supreme Court declares the law. The same law as was declared in Ravinder Kumar Sharma's case could well have been declared in Sukhdev Raj Sharma's case and after such declaration it is a moot point whether Sukhdev Raj Sharma and others would have got any relief or not. In the order disposing of Sukhdev Raj Sharma's case, reproduced earlier, the Supreme Court was categoric in saying that since it appeared that some affected persons who were junior to the petitioners but had been promoted as Junior Engineers had not been impleaded as party-respondents in the writ petition, no relief could be claimed against them in so far as the question of seniority was concerned. The said order is indicative of the settled principle of law that declaration of law by the Supreme Court under Article 141 of the Constitution of India is one thing and grant of relief thereunder is another; the latter being dependent on various factors, considerations and circumstances. Even in the subsequent order of January 30, 1987 the Supreme Court only emphasised that Ravinder Kumar Sharma's case had settled the law that the fixation of a quota as between

(4) (1985) 2 S.C.C. 513.

diploma-holders and non-diploma-holders Line Superintendents for purposes of promotion, who were integrated into a common cadre by the State Electricity Board, was wholly arbitrary and irrational and, therefore, violative of Article 14 of the Constitution, and the Board need have no doubt and difficulty as to the law applicable. Still, the Supreme Court while declaring law does not enact it as a statute or something better than a Statute. The concept of prospective or retrospective applicability, well known to Acts of Parliament and other Legislatures, does not there figure in it. Article 141 of the Constitution makes the law declared by the Supreme Court binding on all Courts within the territory of India. It goes without saying that this Court is bound to apply the law laid down in Ravinder Kumar Sharma's case in the instant litigation, as has been culled out by us above, yet not always obliged to grant the asked for reliefs to the parties just because Ravinder Kumar Sharma got what he asked for from the Supreme Court. The extraordinary jurisdiction of this Court under Article 226 of the Constitution, which has been invoked in the instant litigation, is regulated differently and a lot of discretion enters in such field of justicing.

(25) Now with regard to the objection taken as bar to the hearing of these matters in view of the so-called approval given to Ashok Kumar Sehgal's case by the Division Bench in Kuldip Singh's case and then Kuldip Singh's case having been given the seal of approval by the Supreme Court, we have on point a recent judgment of the Supreme Court in *M/s. Rup Diamonds and others* v. *Union of India and others* (5). That was a case in which the writ-petitioner under Article 32 of the Constitution, claimed identical relief as was given to others by a Single Judge of the Bombay High Court, whose decisions came to be affirmed in appeal by the Division Bench and against who decisions Special Leave Petitions preferred by the Union of India were dismissed by the Supreme Court. The Union of India still denied relief to the petitioner on account of the inordinate delay in seeking revalidation and endorsement on the import licences and secondly, on the merits and permissibility of the claim. In that background, the Supreme Court observed as follows :—

> "8. Apart altogether from the merits of the grounds for rejection — *on which it cannot be said that the mere*

(5) A.I.R. 1989 S.C. 674.

rejection of the Special Leave Petitions in the cases of M/s. Ripal Kumar & Co. and M/s. H. Patel & Co., could, by itself, be construed as the imprimatur of this Court on the correctness of the decisions sought to be appealed against — there is one more ground which basically sets the present case apart. Petitioners are re-agitating claims which they had not pursued for several years. *Petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided. Their case cannot be considered on the anology of one where a law had been declared unconstitutional and void by a Court, so as to enable persons to recover monies paid under the compulsion of a law later so declared void.* There is also unexplained, inordinate delay in preferring this writ petition which is brought after almost an year after the first rejection. From the orders in M/s. Ripal Kumar & Co's case and M/s. H. Patel & Co.'s case it is seen that in the former case the application for revalidation and endorsement was made on 12th March, 1984 within four months of the date of the redemption certificate dated 16th November, 1983 and in the latter case the application for revalidation was filed on 20th June, 1984 in about three months from the Redemption Certificate, dated 9th March, 1984.

9. On a consideration of the matter we think that, apart altogether from the merits of the other grounds for rejection, *the inordinate delay in preferring the claim before the authorities as also the delay in filing the writ petition before this Court should, by themselves, persuade us to decline to interfere."*

(Emphasis supplied).

(26) On the basis of the emphasised words in the afore-quotation, it can safely be held that the orders dated February 10, 1988, passed by the Division Bench of this Court in Kuldip Singh's case, cannot, on the basis of the mere rejection of the Special Leave Petition against the said orders, by the Board, be construed as seal of approval as if a decision of the Supreme Court so as to oust our jurisdiction in hearing these matters. Article 136(1) of the Constitution provides that notwithstanding anything in Chapter IV, the Supreme Court may, in its discretion, grant special leave to appeal

from any judgment, decree, determination sentence or order in any cause or matter passed or made by any Court or tribunal in the territory of India. If the Supreme Court, in its discretion, refuses to grant Special Leave to appeal then there is no appeal. The doctrine of merger of fusing the judgment of the lower Court in that of the appellate Court does not apply to such a situation. Thus, in our view, we can proceed with these matters despite the Special Leave Petition in Kuldip Singh's case having been dismissed. Such view of ours is further strengthened by the order passed by the Supreme Court on January 11, 1988, on the application of the Punjab State Electricity Board Diploma Engineers Association as they were permitted by the Supreme Court to approach the High Court by way of appropriate remedy. This means that the Supreme Court too did not consider the matter to have been finalised at their end and thought it appropriate to refer the applicant to this Court.

(27) Now so far as this Court is concerned, the order passed by the Division Bench in Kuldip Singh's case on February 10, 1988, reproduced earlier, patently shows that CWP No. 8167 of 1987 was allowed because of identity of facts with Ashok Kumar Sehgal's case and nowhere was the decision in the latter case rendered by M. R. Agnihotri, J. given the seal of approval expressly or even impliedly. That decision cannot be construed as pre-emptory to the right of the Board to have its Letters Patent Appeals maintained against the judgment of the learned Single Judge in Ashok Kumar Sehgal's case. A Letters Patent Appeal, as is well known, is an intra-Court appeal; a re-hearing of a sort by the Court itself by a larger Bench. The mere fact that three of us have sat to man this Bench does not mean that we can upset or should overrule the decision in Kuldip Singh's case, because in our view nothing has been decided as such which would warrant overruling and we are not a Court of appeal for that case. Besides, the same Bench when asked to review its decision on an application made by the Diploma-holders Association has said in so many words that they had just followed the decision of M. R. Agnihotri, J. because the facts were the same and also the relief. The Bench was cautious enough while rejecting the review application to hold that whatever decision is rendered by the Full Bench would be binding on the diploma-holders and non-diploma holders. This means that our decision would be binding on those diploma-holders and non-diploma holders also who were parties to Kuldip Singh's case and the said order, in the

event of Ravinder Kumar Sharma's case being reversed modified, explained or added to, would automatically stand reviewed accordingly. The entire conspectus of things were obviously within the contemplation of the Bench. And the order was passed in the presence of the parties' counsel. So even though the review application stands dismissed, a qualified review, on the happening of the contemplated event, has been allowed by the Bench.

(28) For the foregoing reasoning, we overrule the objection challenging our power to deal with these matters and proceed further.

(29) The Board in its return contested the case as set up by Ashok Kumar Sehgal. The defence of the Board, *inter alia,* was that since the quota rule had been struck down by the Supreme Court, it had stopped applying it after October 22, 1986, and had issued an order to that effect on November 14, 1986. It pleaded, however, that between May, 1970 when the quota rule was introduced and November 14, 1986, when the quota rule was formally abolished, about 900 persons were promoted on the basis of their being diploma-holders in Electrical Engineering in accordance with the said rule. The junior-most diploma-holder, who was thus promoted, was at seniority No. 5500 and the non-diploma holder, similarly promoted was at Serial No. 1012-A. These facts were highlighted to suggest that since there was a gap of about 4,500 affected persons in that cadre, it was physically impossible to reschedule the promotions already made on the basis of the quota rule because many diploma-holders had further been promoted to the posts of Junior Engineer-I and still further to the posts of Assistant Engineer and none of those had been impleaded as parties to the petition. It was suggested that in the absence thereof, no relief could be granted to the petitioners. Besides, pleas of laches, neglect and approaching the Court inordinately delayed were also taken.

(30) By means of more than one Civil Misc. application Mukhwant Pal Singh and 57 others sought permission to be impleaded as respondents and they were accordingly impleaded under orders of M. R. Agnihotri, J. Those persons also contested the petition almost on the same lines as that of the Board.

(31) It is not necessary to burden this judgment by quoting in *extenso* the Punjab Public Works Department (Electricity Branch)

Provincial Service Class III (Subordinate Posts) Rules, 1952, which regulate the appointments to the service. Suffice it to mention that these rules contemplate a promotional hierarchy. From an Assistant Linesman the promotion is to a Linesman and then to a Line Superintendent, which on redesignation is Junior Engineer Class II. The next promotional post is Junior Engineer Class I but that is not under the aforesaid rules. That is governed by another set of rules known as the Punjab State Electricity Board Service of Engineers (Civil) Regulations, 1965. From the post of Junior Engineer Class I, the next promotional post is Assistant Engineer and is governed by the aforesaid regulations. The Rules of 1952 aforementioned alone are relevant for Ashok Kumar Sehgal's case. Rule 6 thereof, *inter alia,* provides that all posts in the service shall be filled by promotion, transfer, deputation or by direct appointment. The said rule provides that when a post in the service falls vacant, the appointing authority will determine the manner in which the post is to be filled. The quota rule introduced by means of office orders was progeny of this rule. So was the office order No. 97, dated 22nd October, 1968 referred to in the judgment in *Ravinder Kumar Sharma's case* (supra). The only other rule relevant is rule 9, which, *inter alia,* provides for the seniority of the members of the service. The Exception to it says that if a member of the service is promoted temporarily to a post earlier than his senior, for reasons other than the inefficiency of the senior person, they will take rank *inter se* according to their relative seniority in the class from which they were promoted and the junior person thus promoted shall not be confirmed from a date earlier than the date of confirmation of his senior except on the score of inefficiency of the latter. The Proviso further says that if a member is appointed to a higher class later than a person who was junior to him in the lower class for reasons which the appointing authority may certify in writing to be connected with the public interest the person so appointed shall be given the same seniority in the higher class *vis-a-vis* such junior as he held in the lower class. The Exception and the Proviso govern specific fields qualifiedly introducing the element of merit into seniority rule for the purposes of promotion.

(32) A valid quota rule was already existing prior to May 14, 1970, in the cadres of Linesman and Line Superintendents. 67 per cent quota was kept for direct recruitment from the open market and 33 per cent was kept as promotional quota. By Office order dated May 14, 1970, the Board for the first time encroached upon the

quota for direct recruits. It reduced the quota of direct recruits from the open market to 62 per cent. The withdrawn 5 per cent was reserved as a promotional quota for diploma-holders-Linesmen. The earlier promotion quota of 33 per cent was converted exclusively reserved for non-diploma-holders Linesmen. The pattern having been set, another encroachment was made on the quota of direct recruits on 2nd July, 1973. The quota of direct recruits thenceforth was 47 per cent, diploma-holders Linesmen 20 per cent, and non-diploma holders Linesmen remained at 33 per cent. Again the Board on May 9, 1974, further increased the quota of promotion of diploma-holders Linesmen from 20 per cent to 33 per cent. Thus, the ultimate result was that the quota of direct recruits was cut down to 34 per cent, diploma-holders Linesmen in the matter of promotion were given 33 per cent and non-diploma holders Linesmen retained their 33 per cent. The need for this alteration arose because diploma-holders alone were eligible to compete as direct recruits for the posts of Linesmen and the ones who did secure the requisite posts had very often opted for joining as Assistant Linesman on the basis of their basic qualification being matric and that was considered by the Board to be an under-employment. It is for this reason suggestedly that the Board encroached upon the field of direct recruits so as to give impetus to the under-employed diploma-holders Assistant Linesmen and then to Linesmen for promotional avenues. In actual working thereof it is not difficult to perceive that when the second door of promotion was opened to Linesmen to become Line Superintendents by the introduction of the quota rule, the queue in front of the first door automatically was thinned. The diploma-holders-Linesmen for obvious reasons left their places in that queue and came to the second promotional door to make their own queue, leaving behind non-diploma holders freshly queueing up before the first door. It is difficult to conceive that if by the introduction of the quota rule diploma-holders had gained advantage over the non-diploma holders, inasmuch as they could secure better places in queueing improving the chances of their gaining promotions quicker, it can equally not be ruled out that some of the non-diploma holders also gained a similar advantage in improving their position in the queue, as the 33 per cent promotional quota thenceforth exclusively was left for them. The rub, however, was the existence of the common seniority list, same cadre, same assignment of duties and the same pay. And yet there was distinction in promotion to the post of Line Superintendent on the basis of educational qualifications, especially when the promotion again was to a post in a

common cadre. If a promotional post in the quota of diploma-holders was available it would go to a diploma-holder and if one was available in the quota of non-diploma holder, it would go to a non-diploma holders. Then the question arose, why should there be two gates of entry on the basis just of educational qualifications when in the climbing of stairs one is supposed to leave the same common first floor to go to the common second floor. The quota rule, in such circumstances, was struck down in various cases starting from *Mohd. Shujat Ali's case* (supra) till day, some of which we will advert to and not all cited. But the point which is worth emphasis here is that neither the diploma-holders were all gainers nor the non-diploma-holders all losers. Despite the differentiation created they all remained and admixture of losers and gainers by the introduction of the quota rule. This aspect has to be borne in mind when the question of granting or denying the relief crops up.

(33) In *Mohd. Shujat Ali's case* (supra) the Supreme Court upheld the differentiation between graduate supervisors and non-graduate supervisors for the purposes of promotion as Assistant Engineer. It is clear, however, from the judgment that this differentiation was maintained on the ground that these two categories of supervisors had been kept distinguished and apart under the cadre rules right from the beginning, with different pay-scales and different treatment for the purpose of promotion. In *State of Jammu and Kashmir* v. *Triloki Nath Khosa and others* (6), it was held that having regard to the object of achieving administrative efficiency in the engineering service, it was a just qualification to maintain a distinction between Assistant Engineers who were degree holders and those who were merely diploma-holders. It is discernible from *Triloki Nath Khosa's case* (supra) that if the object is to achieve administrative efficiency in the hierarchy, distinction can be made on the basis of educational qualifications by creating a bar to further promotions unless educationally qualified. In *Col. A. S. Iyer and others* v. *V. Balasubramanyam and others* (7), recruits from two different sources not completely fused into one integrated service were allowed to maintain their separate identity as military engineers and civilian engineers. The latest case on the point is *N. Abdul Basheer and others* v. *K. K. Karunakaran and others* (8), decided by

(6) 1974(1) SCR 771.

(7) 1980(1) SCC 634.

(8) Civil Appeals Nos. 1553 to 1556 of 1981, decided on 15th May, 1989.

the Supreme Court on May 15, 1989, where it has been held that where the nature of duty of Preventive Officers, whether graduate or non-graduate, was identical and both were put to field work and equally competent, the prescription of a ratio dividing the quota of promotion between Graduate Preventive Officers and non-Graduate Preventive Officers was invalid, being violative of Articles 14 and 16 of the Constitution.

(34) The parallel strain of thought is reflected in the cases mentioned hereafter. In *S. L. Sachdev and another* v. *Union of India and others* (9), discrimination between Upper Division Clerks drawn from Audit Offices and others drawn from other sources in the matter of eligibility qualification for promotion, was justified on the basis that one enjoyed greater experience and that the distinction based on length of service was directly related to the object of such classification. In *Roop Chand Adlakha and others* v. *Delhi Development Authority and others* (10), rules prescribing different conditions of eligibility for diploma-holders and graduates for promotion from the cadre of Junior Engineers to that of Assistant Engineers and from the cadre of Assistant Engineers to that of Executive Engineers in the Public Works Department of the Delhi Development Authority were held not vilative of Articles 14 and 16 of the Constitution. The State was held not precluded from conferring eligibility on diploma-holders conditioning it by other requirements which included certain quantum of service, experience, consistent with the requirements of promotional posts and in the interest of efficiency of the service, And then there is *Ravinder Kumar Sharma's case* (supra), which we have analysed in detail earlier, where by means of an office order different conditions of eligibility prescribed for diploma-holders and non-diploma holders in order to qualify for seeking promotion to the post of Line Superintendent, have been applied and then was given relief to Ravinder Kumar Sharma, treating him equally eligible *vis-a-vis* others for promotion, and what only was declared invalid was the further prescription of quota between diploma-holders and non-diploma holders. In *Roop Chand Adlakha's case* (supra) the distinction in *Ravinder Kumar Sharma's case* (supra) (described therein as Punjab State Electricity Board's case) was taken note of to come to the conclusion that having regard to the requirements of promotional posts different conditions of eligibility for promotion on the differences based on the educational qualifications and service experience, were rightly prescribed.

(9) 1981(1) SCR 971.
(10) AIR 1989 S.C. 307.

(35) The office order dated October 22, 1968, quoted in the published report in *Ravinder Kumar Sharma's case* (supra) clearly reveals that different conditions of eligibility have been prescribed for diploma-holders and non-diploma holders Linesmen, the fulfilment of which alone qualifies them to be promoted as Line Superintendent on the basis of seniority, and deduciably, as we have culled out, to be reckoned on the date when the post in the promotional cadre falls vacant. Our deduction is based on pure logic, practical experience, common knowledge, besides precedent. Suppose a Linesman, be he a diploma-holder or a non-diploma-holder, acquires eligibility for promotion when no promotional post is available, he inevitably has to wait for one becoming available. He should normally on the strength of *B. S. Yadav and others* v. *State of Haryana and others* (11). get it that day if falls vacant. But despite that he is not promoted, for one reason or the other. And in the meantime another Linesman, be he a diploma-holder or a non-diploma-holder, becomes eligible. The question then inevitably will crop up, who should get the promotional post. Should it in these circumstances go to the senior out of the two, even though the senior acquired eligibility later than the junior. or should it go to the one who acquired eligibility first. In this situation, seniority *per se* cannot be intended to be taken as the basis for promotion, as, otherwise, it would lead to undesirable results. If it is to be dealt otherwise, it would lead to breeding of manipulations, machinations, calculations and caprice. Designedly the case of promotion of the first eligible can deliberately be kept delayed with oblique motives so as to let suitable rivals come in and in this manner his acquired eligibility can be frustrated by someone senior acquiring eligibility far far later. Since different conditions of eligibility for promotion from Linesman to Line Superintendent have been prescribed by the Board on the differences based on the educational qualification-cum-service experience, respectively for non-diploma holders and diploma holders, having regard to the requirements of promotional posts and in the interests of efficiency of service, the eligibility criteria is the first dominant factor and thereafter comes the principle of seniority governing the fate when two equal eligibles stake claim to the promotional post. In that situation, the senior person would get the promotional post on both acquiring eligibility on the same date, even though the promotional post falls vacant later. Therefore, we

(11) 1980(3) SLR 591.

wish to emphasise here that seniority alone is not the basis for promotion from the post of Linesman to the post of Line Superintendent, as is the common belief of the writ petitioners in the instant litigation, and more so by Ashok Kumar Sehgal, who in his writ petition except for pleading his seniority number and the numbers of those who were junior and promoted, has done nothing else. Significantly nothing has been pleaded by him disclosing as to when did anybody acquire eligibility for promotion and when did the post fall vacant and which person got that post and by what right or negation thereof.

(36) To sum up the points emphasised heretofore, it is held that before a writ petitioner can, succeed on the basis of *Ravinder Kumar Sharma's case* (supra) he must positively allege not only his seniority number on the seniority list but also as to when did he acquire eligibility for promotion and when was the post available which he could claim. Additionally, he would have to implead the persons who got that promotional post in each violation of the rights of the writ petitioner and on what basis i.e., when did they become eligible for the post etc. The writ petition cannot be maintained on vague allegations, or on the bare allegation that as per the seniority list the writ petitioner was senior to the ones who were promoted as Line Superintendent. The Hon'ble Single Judge was unfortunately not advised on this aspect of the case and that is the reason that the principle of seniority-cum-merit was ordered to be applied in the case of all the writ-petitioners.

(37) The case of the writ petitioners in seeking implementation of the judgment in Ravinder Kumar Sharma's case, too, appears to us misconcieved. As said before, the law declared therein and the ratio decidendi emerges for all but the implementation of the judgment is meant for the parties. The writ petitioners can at best seek *application* of the law declared by the Supreme Court and cannot in that attempt even ask redeclaration of the same. They cannot be permitted to say now that in their cases too the quota rule be declared abolished. And then ask for the consequences like those followed in Ravinder Kumar Sharma's case. The writ petitioners can at best seek relief under the declared law, which the Court may in its discretion grant or not. This would be the right position in law.

(38) Mr. J. L. Gupta, learned counsel for Ashok Kumar Sehgal, vehemently urged that a law violating fundamental rights is void *ab*

initio and it is void from the date of its making. Reliance was placed by him on *Keshavan Madhava Menon* v. *State of Bombay,* (12), to suggest that when the law has been declared void, relief has to be given in favour of the person affected. This argument presupposes that we have to go back to discover what was the law relating to promotion prevalent at the time prior to May 14, 1970, wherefrom and thereafter was the quota rule gradually introduced. The promotional rule prior to May 14, 1970 was that in a cadre of 100 persons, 67 of posts were meant for direct recruits and the remaining 33 posts were meant for promotees. So all the Linesman on the striking off of the quota rule would have to pass through the narrow 33 per cent door to climb to the second storey. This is the inevitable effect because the law declared by the Supreme Court is that the quota rule is void, that is to say, the change effected was bad and thus the *status quo ante* be reverted. This would be an extremely unfortunate situation for the parties to the litigation if we date back the application by narrowing down the promotee quota to 33 per cent, as existing prior to May 14, 1970. When asked to elaborate on the point, Mr. H. L. Sibal, learned counsel for the Board, made statement before us that on the maintenance of *status quo ante,* there are far more promotee Linesmen manning posts of Line Suptrintendent having eaten away the quota meant for direct recruits. The claim of the writ petitioners for retroactive application, treating the quota rule as *non est,* would lead to shrinkage of promotional quota both in the categories of diploma holders and non-diploma holders, for, as said before, they are an admixture of gainers and losers. The intention of the Board is clear in that regard as after Ravinder Kumar Sharma's case and on the abolition of the quota rule, it has now prescribed 62 per cent posts for direct recruits and 38 per cent posts for promotees. This aspect will also have to be borne in mind for the grant or denial of reilef and at this stage if the clock is put back reshuffling and readjusting the promotional process governing two decades, it would be a nerve-wrecking and never ending exercise involving numerous persons, alive or dead, in and out of service, further promoted or retired. This aspect cannot easily be ignored.

(39) The ground of delay and laches in approaching this Court, as was projected before the learned Single Judge, has reiteratedly been urged before us. It is contended that Ashok Kumar Sehgal

(12) 1951 Supreme Court Reports 228.

has approached this Court in the year 1987, whereas the quota rule was introduced in the year 1970 and his junior Ramesh Kumar was allegedly promoted on July 12, 1977. It has been pointed out that the writ-petitioner has approached this Court after 10 years and the delay factor and laches on his part should not have been ignored. Reliance was placed on a few Supreme Court decisions to press the point, but they were ignored by the learned Single Judge again on the basis of Supreme Court decision. We hereafter take note of the conflicting views.

(40) The first in point of time is *Laxmanappa Hanumantappa Jamkhandi* v. *The Union of India and another* (13). Mahajan, C.J. speaking for the Court, observed as follows :

> ".....The highest Court in this land has been given original jurisdiction to entertain petitions under Article 32 of the Constitution. It could not have been the intention that this Court would go into stale demands after a lapse of years. It is said that Article 32 is itself a guaranteed right. So it is, but it does not follow from this that it was the intention of the Constitution makers that this Court should discard all principles and grant relief in petitions filed after inordinate delay.
>
> We are not anxious to throw out petitions on this ground, but we must administer justice in accordance with law and principles of equity, justice and good conscience. It would be unjust in deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapses of a number of years. It was on this ground that this Court in Jaisinghani's case observed that the order in that case would not effect Class-II officers who have been appointed permanently as Assistant Commissioners. In that case, the Court was only considering the challenge to appointments made during the periods of 1945 to 1950. If there was adequate reason in that case to leave out Class-II Officers, who had been appointed permanently Assistant Commissioners, there is much more reason in this case that the officers who are now permanent Assistant Commissioners of Income-tax and who were appointed

(13) 1955 Supreme Court Reports 769

and promoted to their original posts during 1945 to 1950 should be left alone."

(41) The second in line is *State of Madhya Pradesh and another* v. *Bhailal Bhai and others* (14), the Constitution Bench observed :

"The provisions of the Limitation Act do not as such apply to the granting of relief under Article 226 . However, the maximum period fixed by the Legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 may be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy, but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable."

(42) Third in line is *M/s Tilokchand and Motichand and others* v. *H. B. Munshi and another* (15). Therein, the Constitution Bench observed :

"The Limitation Acts do not in terms apply to claims against the State in respect of violation of fundamental rights. A person complaining of infraction of any such right has one of three courses open to him. He can either make an application to this Court under Article 32 of the Constitution, or he can file a suit asking for appropriate reliefs. The decisions of various High Courts in India firmly laid down that in the matter of the issue of a writ under Article 226, the Courts have a discretion and may in suitable cases refuse to give relief to the person approaching it even though on the merits the applicant has a substantial complaint as regards violation of fundamental rights. Although the Limitation Act does not apply, the Courts have refused to give relief in cases of long or unreasonable delay. As noted above in Bhailal Bhai's case (supra) it was observed that the "maximum period fixed by the Legislature as the time within which the relief by a suit

(14) A.I.R. 1964 S.C. 1006

(15) (1969) 1 Supreme Court Cases 110.

in a civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured". On the question of delay, we see no reason to hold that a different test ought to be applied when a party comes to this Court under Article 32 from one applicable to applications under Article 226. There is a public policy behind all statutes of limitation and according to Halsbury's Laws of England (Third Edition), Volume 24, Article 330 at page 181 :—

"The Courts have expressed at least three different reasons supporting the existence of statutes of limitation, namely (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have also the evidence to disprove a stale demand and (3) that persons with good causes of action should persue them with reasonable diligence."

(43) Fourth in line is *Rabindranath Bose and others* vs. *The Union of India and others* (16), wherein the Constitution Bench observed follows :

"But in so far as the attack is based on the 1952 Seniority Rules, it must fail on another ground. The ground being that this petition under Article 32 of the Constitution has been brought about fifteen years after the 1952 Rules were promulgated and effect given to them in the Seniority List prepared on August 1, 1951. Learned counsel for the petitioner says that this Court has no discretion and cannot dismiss the petition under Article 32 on the ground that it has been brought after inordinate delay. We are unable to accept this contention. This Court majority in M/s Tilokchand Moti Chand and others *v.* H. B. Munshi and others, 1969 (1). Supreme Court Cases 110, held that delay can be fatal in certain circumstances."……

"The party claiming Fundamental Rights must move the Court before other rights come into existence. The action of Courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court."

(16) 1970 Service Law Reporter 339.

(44) The aforesaid illuminating and binding precedents were noted by a Full Bench of this Court in *Jagjit Rai Vohra* v. *State of Haryana and others* (17). Chief Justice Mahajan, speaking for the Court, observed that the correct view seems to be that laches cannot be overlooked and each case will have to be examined to see whether a particular petitioner is or is not entitled to the relief available to him in view of the decision in Shamsher Jang Shukla's case by the Supreme Court (relief on the basis of which case was then sought and as similarly now is sought instantly on the basis of Ravinder Kumar Sharma's case).

(45) Mr. Sibal also cited a judgment of a two-Member Bench of the Supreme Court in *P. S. Sadasivaswamy* v. *State of Tamil Nadu* (18), to contend that delay and laches, so as to challenge a promotion matter, is a serious thing and the Court should refuse to exercise discretion. In this case, it was observed as follows :

> "...As person aggrieved by an order of promotion 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. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court."

The conduct of the petitioner in that case was also commented upon by the Court to say that in effect he wants to uncramble a scrambled egg.

(17) 974 (2) S.L.R. 27.
(18) 1976 (1) S.L.R. 53.

(46) Mr. Sibal then relied upon a Single Bench decision of this Court in *Ch. Amar Singh and others* v. *State of Haryana* (19), in which all the case law on the subject was considered and the writ petition was dismissed on the ground of delay and laches.

(47) On the other hand, Mr. J. L. Gupta, learned counsel for the petitioner, relied on *Ramchandra Shankar Deodhar and others* v. *The State of Maharashtra and others* (20), in which the Supreme Court, fully aware of the trend setting decisions afore-quoted, went on to interfere despite delay. But there the Court justified its action by observing as follows :

> "...Here, as admitted by the State Government in paragraph 55 of the affidavit in reply, all promotions that have been made by the State Government are provisional and the position has not been crystalised to the prejudice of the petitioners. No rights have, therefore, accrued in favour of others by reason of the delay in filing the petition. *The promotions being provisional, they have not conferred any rights on those promoted and they are by their very nature liable to be set at naught*, if the correct legal position, as finally determined, so requires. We were also told by the learned counsel for the petitioners, and that was not controverted by the learned counsel appearing on behalf of the State Government, *that even if the petitions were allowed and the reliefs claimed by the petitioners granted to them, that would not result in the reversion of any Deputy Collector or officiating Deputy Collector to the posts of Mamlatdars/Tehsildars; the only effect would be merely to disturb* inter se *seniority as officiating Deputy Collectors or as Deputy Collectors.* Moreover it may be noticed that the claim for enforcement of the fundamental rights of equal opportunity under Article 16 is itself a fundamental right guaranteed under Article 32 and this Court which has been assigned the role of a sentinel on the qui vive for protection of the fundamental rights cannot easily allow itself to be persuaded to refuse relief solely on the jejune ground or laches, delay or the like."
>
> (Emphasis supplied by us)

(19) 1982 (2) S.L.R. 270.
(20) 1974 (1) SLR 470.

The emphasised words in *Ramchandra Shankar Deodhar's case* show that on ignoring laches and delay, the grant of relief was only on paper because it involved not any reversion and the promotions gained by the parties being provisional, were in the nature of things, capable of revocation. *Ramchandra Shankar Deodhar's case* (supra) is thus a case of its own kind where the Supreme Court exercised the discretion to interfere. The emphasis all the while is on the discretion of the Court to act this way or that way. In the earlier part of the judgment in *Ramchandra Shankar Deodhar's case* (supra) it is evident that the Constitution Bench was explaining the earlier Constitution Benches by observing :

> "It must be remembered that the rule which says that the Court may not enquire into belated and stale claims is not rule of law but rule of practice based on sound and proper exercise of discretion and there is no inviolable rule that whenever there is delay the Court must necessarily refuse to entertain the petition. Each must depend on its own facts."

Even if it is a rule of practice, it is reflective of practical wisdom not to unsettle settled things which took place in the distant past.

(48) A three-Member Bench of the Supreme Court in *Amrit Lal Berry* v. *Collector of Central Excise Central Revenue and others*, (21), taking stock of the earlier case law, observed as foliows :

> "...But, a number of promotions having taken place between 1959 and the filing of Amrit Lal Berry's petition in 1971, those who were so promoted and had been satisfactorily discharging, for considerable periods before the filing of the petition, their duties in a higher grade would acquire new claims and qualifications, by lapse of time and due discharge of their new functions so that they could not, unless relief had been sought speedily against their allegedly illegal confirmations and promotions, be equitable-equated with the petitioner. The inequality in the equitable balance brought into being a petitioner's own laches and acquiescence cannot be overlooked when considering a claim to enforce the fundamental right to equal

(21) AIR 1975 S.C. 538.

treatment. To treat unequals equally would also violate that right. Although, it may not be possible for the State or its agents to plead an estoppel against a claim to the fundamental right to equal treatment, yet, if a petitioner has been so remiss or negligent as to approach the Court for relief after an inordinate and unexplained delay, he certainly jeopardises his claims as it may become inequitable, with circumstances altered by lapse of time and other facts, to enforce a fundamental right to the detriment of similar claims of innocent third persons."

(49) The Hon'ble Single Judge relied on some observations in *Amrit Lal Berry's case* (supra) contained in paragraph 11 of the report, to shut the door in arguing that the decision of the Supreme Court in Ravinder Kumar Sharma's case must be confined to the parties before the Court, but where the extract quoted by the learned Single Judge stopped, immediately follows the following observations:

"But, we may point out here that a mere failure to apply a rule which ought to have been applied may not, by itself, justify an invocation of the powers of this Court under Article 32 of the Constitution. In order to succeed in a petition under Article 32 of the Constitution the petitioner has to disclose how his fundamental right has been infringed by a particular rule or decision or its application. The impact of the rule or decision upon the facts of each petitioner's case has to be clearly brought out."

(50) The Hon'ble Single Judge then relied on a two-Member decision of the Supreme Court in *Inter Pal Yadav and others* v. *Union of India and others,* (22) to negative the plea of laches and delay. That was a case of termination of service of casual labourers employed on projects with the Railway Ministry. A scheme was sought to be implemented by the Railway Ministry, terms whereof were under examination of the Supreme Court. Adversely commenting on the scheme, it was observed that providing therein that those in respect of whom the Court granted interim relief by stay or suspension of the order of retrenchment would be treated in service on 1st January, 1984 while others who failed to obtain interim relief said to be similarly situated would be pushed down in the

(22) 1985 (2) S.L.R. 248.

implementation of the scheme. In these circumstances, the Court observed that this would be discriminatory as those workmen came from the lowest grade of Railway service and they could ill-afford to rush to the Court. It was thus observed that those who could not come to the Court need not be at a comparative disadvantage to those who rushed to Court. As is obvious, this is hardly a case of delay and laches. Only the reasonableness of the scheme was being considered and the labourers who had come to the Court and others who had not, were put at par by modifying the scheme. *Inter Pal Yadav's case* (supra) is hardly an answer to the plea of delay and laches.

(51) Mr. J. L. Gupta, learned counsel for Ashok Kumar Sehgal, however, then relied upon *G. P. Doval and others* v. *Chief, Secretary, Government of U.P. and others,* (23), again a decision of two Hon'ble Judges of the Supreme Court, where the Court did not refuse relief on ground of delay and laches. That was a case in which the impugned seniority list had not been finalised and the existence of a tentative seniority list, which was under challenge, was ordered to be altered despite the then petitioner approaching the Court belatedly. In these set of facts another ground for ignoring delay was involved, being that the petitioners belonged to the lower echelons of service and so it was visualised that they may have found it extremely difficult to rush to the Court. *G. P. Doval's case* (supra) is also not a case containing any statement of law that in all events where the writ-petitioners belong to the lower echelons of service, by that fact alone, become immune to the defence of laches and delay. In any case, as far as this Court is concerned the ratio of the Constitution Benches is binding in preference to the views expressed by the two-Member Bench of the Supreme Court in *G. P. Doval's case* (supra). The Constitution Benches, afore-referred to, appear not to have been taken note of in *G. P. Doval's case.*

(52) The next case relied upon by the learned Single Judge was a decision rendered by the Supreme Court in *M/s Star Diamond Co., India* v. *Union of India and others,* (24). That too is not a case in answer to the ground of delay and laches. It commended to the Hon'ble Single Judge that the Board cannot overlook the fact that

(23) 1984(2) SLR 555.

(24) AIR 1987 SC 179.

it was pointless for the petitioners and other persons similarly situated, to rush to the Court during the pendency of the Board's appeal before the Supreme Court and it was only after the decision of Ravinder Kumar Sharma's case in 1986 that the employees thought of coming to the Court when the Board had chosen to implement the judgment for future promotions only. The learned Single Judge cast a duty on the Board to itself extend the relief to each and every employee similarly situated without insisting on his knocking at the door of the Court, and for these observations relied on the aforementioned three cases. These cases, as said before, negative the views expressed by the Constitution Benches in *Bhailal Bhai's, M/s Tilokchand and Motichand's* and *Rabindranath Bose's cases* and the Full Bench of this Court in *Jagjit Rai Vohra's case* (supra). The mere existence of a Supreme Court decision in favour of a writ-petitioner does not *ipso facto* mean that he can get the relief from a High Court.

(53) The last judgment relied upon by the Hon'ble Single Judge is *Piara Lal and others* v. *The State of Punjab and others*, (25), in which D. S. Tewatia, J. (as the Ex-Chief Justice then was) took the view that declaratory judgments of the Court dealing with the legality of the statutes, rules and Governmental policies are binding not only on persons who are party thereto but on others also who may be incidentally affected by such a declaration. It was also held in that case that it is only a party which was a necessary party before the Court and had not been impleaded as such, that may feel free to legally challenge the binding nature of a given judgment of the Court if that judgment adversely affects its rights and interests. Declaratory judgments of the Supreme Court with regard to law are of course binding on all, parties or no parties, as has been indicated by us earlier. But a necessary party who was not so impleaded may legally challenge the effect or nature of the judgment if it adversely affects its rights and interests. This judgment is hardly a precedent for the view that if there is a Supreme Court judgment in favour of the writ-petitioner, he must *ipso facto* get relief therein without impleading proper parties, for statedly they would be bound by the law declared by the Supreme Court even in absentia. This is not the correct analysis in our view. The fight in ultimate analysis is not between "Your law" and "My law" but rather on the question that under the law what are "My rights" and "Your rights" and how should the Court resolve the conflict.

(25) 1983(2) SLR 786.

(54) For the abundance of legal authority on the proposition that delay and laches play a significant part in the grant or denial of relief to a writ-petitioner, we have no option but to adversely comment that not a word has been said in his petition by Ashok Kumar Sehgal as to why he did not challenge a similar quota rule in 1970, for then he was an Assistant Linesman, and then again on his promotion to the post of Lineman in 1973 why did he not challenge that rule in that year, and even as late as July 1977 when statedly his junior Ramesh Kumar was promoted as Line Superintendent. The unexplained delay of 10 years assumes significance when we know and can conceive what would have transpired in that decade and now many innocent Line Superintendents would have become entitled to sit back and consider that their appointments and promotions effected a long time ago would not be set aside after a lapse of a number of years. Thus, on this ground also Ashok Kumar Sehgal should have been denied the relief.

(55) The law as laid down by the Supreme Court in *Ravinder Kumar Sharma's case* (supra), as said before, is applicable to all but before it is availed of by any writ-petitioner every affected person has a right to be heard by the Court and thus a duty is cast upon the petitioner to implead the affected parties as respondents. Matters regarding acquisition of a particular seniority, the date when the promotional post fell vacant, the date when the respective parties gained eligibility for promotion, the date and the reasons why one party was overlooked in the matter of promotion, are all questions of fact, which need to be pleaded and controverted with clarity and precision. Ashok Kumar Sehgal in his writ petition has nowhere impleaded Ramesh Kumar, the affected party, from the date of promotion of whom he wants promotion. A list of junior diploma holders was given by him in paragraph 7 of the petition. The name of Ramesh Kumar does not even figure there. All what is given therein is the date of joining as Linesman, seniority number as Linesman and date of promotion to JE-II. This is an extremely unsatisfactory way to seek mark over another. Significantly, he only impleaded the Board and its Chief Engineer as the only two respondents. Later some private parties of their own got impleaded as respondents but the affected Ramesh Kumar is not amongst them. He simply cannot be allowed to ask to be treated as promoted from the date his junior was promoted because in one post there can at one time be one incumbent and the something follows on such retrospective promotion as there is a consequential displacement.

Thus, in the absence of proper and necessary parties, Ashok Kumar Sehgal is not entitled to any relief.

(56) Even the law in that regard is well settled. In *Udit Narain Singh Malpaharia* v. *Additional Member Board of Revenue, Bihar and another,* (26), a Constitution Bench of the Supreme Court held that in a *writ* of certiorari not only the tribunal or authority whose order is sought to be quashed but also parties in whose favour the said order is issued are necessary parties. It was further observed that the petition was incompetent if necessary parties who were there before the tribunal or authority, were not impleaded as parties in the High Court.

(57) In *Parbodh Ram and others* v. *State of Uttar Pradesh,* (27), the Supreme Court has ruled that a High Court ought not to hear and dispose of a writ petition under Article 226 without the persons who would be vitally acected by its judgment, being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually and if the petitioner refuses to so join them the High Court ought to dismiss the petition for non-joinder of necessary parties. The mere fact that before the learned Single Judge some diploma-holders on their own had become respondents is not to say that those respondents got impleaded themselves in a representative capacity. Even the question of impleading parties in a representative capacity would not fully cover the instant cases because the dispute essentially in each case would be as to who will steal march over whom, in the matter of promotion. Allied facts earlier mentioned, like place of seniority etc. immediately become questions of fact raiseable and controvertable. For non-impleading of necessary parties, the writ petition of Ashok Kumar Sehgal should have thus been dismissed, more so when even Ramesh Kumar, the one who allegedly stole march over the petitioner, was not impleaded either on the behest of the writ petitioner or of his own.

(58) Since we are approaching finale to Ashok Kumar Sehgal's case, it would be fair to notice an argument based on the principle of "prospective overruling" as approved in *L. C. Golak Nath and others* v. *State of Punjab and another,* (28). *L. C. Golak Nath's case* (supra)

(26) AIR 1963 SC 786.
(27) AIR 1985 SC 1677.
(28) AIR 1967 SC 1643.

was overruled in *His Holiness Kesvananda Bharti Sripadgalvaru and others* v. *State of Kerala and another,* (29). Keeping apart the question as to whether the doctrine of "prospective overruling" holds the field or not, the same can here be put aside as inapplicable. That doctrine applies to a case where a superior court, whose judicial precedents are binding on inferior courts, chooses to depart from or overrule the law laid down earlier. In *Golak Nath's case* (supra) it was held that the Court which has the power to depart from or overrule its earlier decisions has the power to say that the overruling would apply prospectively so that the law settled and applied earlier thereto is not disturbed so as to keep finalised the judgments earlier rendered. Herein Ravinder Kumar Sharma's case no such situation arose. There was no view to the contrary given earlier by the Court which was overruled. The rule was not even conditioned to restrict or prospective application. To be further fair to the learned counsel for the parties, it must also be acknowledged here that many judicial precedents were cited by both sides in support of their respective views on all aspects, but we have taken note of only those as find mention in this judgment and have not liked to further burden it more with judicial precedent which were by and large repetitive of the principles notice earlier.

(59) Lastly, Mr. Sibal, learned counsel for the Board, submitted that in equity also it is not fair to ask the Board at this stage to reschedule the promotions retrospectively as that would lead to complete chaos and would put the Board to such a large financial burden that it would ultimately have to be met by the innocent tariff-payer i.e., the consumer of electricity. He submitted that pre-dated promotions would result in sequal demotions. Such promotees have been ordered by the learned Single Judge to be paid arrears of salary etc. on their deemed promotions from back date. From the resulting demotions it is difficult to say it with certainity whether sequel over payment of salary etc. is withdrawable, more so when the prospective demotees have worked in their promotional positions. He further submitted that the experience of those prospective demotees by this time is likely to go waste. He further contended that though it does not lie in his mouth to plead that the law laid down in Ravinder Kumar Sharma's case is meant for prospective application, yet he says that in the grant of relief the Court should bear in mind the equities of the case, more so when the

(29) AIR 1973 SC 1461.

Board would be obliged to pay to the new class of promotees arrears of salary etc. for which they have not rendered corresponding work; for such salary is normally due, and that too for a period which may extend to years, regarding which a suit for recovery of arrears would be barred under the Limitation Act. Mr. J. L. Gupta, learned counsel for Ashok Kumar Sehgal, though not conceding, suggested that the relief be moulded in such a way that Ashok Kumar Sehgal and the persons similarly situated should be restored the seniority and consequential promotion leading to fixation of pay but restrict the payment of arrears of salary etc. to 36 months prior to the filing of the petition, making adjustments for the requisite notice period of two months. We have pondered over these contentions but are of the view that in the situation in which relief is being claimed by the writ petitioner, the Board would be put to an onerous burden, which burden would ultimately fall on the public and it is ultimately the tariff-payer or electricity consumer who would be punished. It cannot be forgotten that whether it was this person or that person the posts in the cadre in the hierarchy had to be kept manned, not for paying salaries to employees, but to draw work out of them. Now if the judgment and order of the learned Single Judge is allowed to sustain in the matter of payment of arrears of salary etc. reckoned after giving deemed promotions and fixation of pay, that would be a wrongful additional burden on the Board, not having drawn corresponding work from the writ petitioners. The neglect, delay and laches of the petitioners both are the relevant to deny the relief to the writ petitioners.

(60) Thus, to conclude, the judgment and order of the learned Single Judge in CWP No. 1903 of 1987 in Ashok Kumar Sehgal's case is set aside, for the reasons:

(a) He cannot succeed only on the ground that he was senior to his juniors who were promoted as Line Superintendents;

(b) He cannot succeed in his petition because it suffers from lack of particulars and vagueness, having not stated when did he acquire eligibility for promotion, when did his juniors acquire eligibility for promotion, when did the promotional post/posts fall vacant which he was deprived of and on what basis ?

(c) He cannot succeed for having not impleaded the parties affected thereby, if he was to be given promotion from a

back date, and more particularly in the absence of Ramesh Kumar, the junior suggestedly promoted earlier to him.

(d) The claim of the writ-petitioner is stale and an effort to unsettle settled matters and would be inequitous to disturb those who sit back and consider that their appointments and promotions effected a long time ago would not be upset after a lapse of a number of years;

(e) He cannot sueceed since rights of other parties have come into existence and this Court cannot harm innocent parties since those rights have emerged by reason of delay on the part of the writ petitioners.

(f) The writ-petitioners could only claim applicability of the law laid down in Ravinder Kumar Sharma's case and not relief by way of implementation thereof.

(g) Lastly, the writ petitioners cannot succeed on the basis of comparative equities, since in the event of relief as claimed being granted in them, the Board would be put to an onerous burden, which burden would ultimately fall on the public and it is ultimately the tariff payer or electricity consumer who would be punished for none of his fault.

(61) For the foregoing reasons Letters Patent Appeal No. 402 of 1988 would stand allowed and to employ the words of Alagiriswami, J. in *P. S. Sadasivaswamy's case* (supra) we keep the egg scrambled and scuttle the effort to unscramble it.

RESULT :

Category 1 :

LPA No. 402 of 1988 is allowed and the judgment and order passed by the Hon'ble Single Judge in CWP No. 1903 of 1987 is set aside, while dismissing the writ petition. The parties are left to bear their own costs.

Category 2:

(i) LPA Nos. 403 to 411 of 1988 are allowed for reasons recorded in LPA No. 402 of 1988 and the corresponding CWP

Nos. 497, 1440, 1716, 1806, 1812, 1942, 2476, 2609 and 3145 of 1987 are dismissed. The parties are left to bear their own costs.

(ii) LPA No. 309 of 1988 stands allowed since the judgment and order in CWP No. 1903 of 1987 has been upset for reasons recorded in LPA No. 402 of 1988. The parties are left to bear their own costs.

(iii) LPA No. 547 of 1988 stands allowed for reasons recorded in LPA No. 402 of 1988. The parties will bear their own costs.

Category 3 :

(i) LPA No. 661 of 1988 stands allowed for reasons recorded in LPA No. 402 of 1988, but CWP No. 1637 of 1979 is remitted back to the Hon'ble Single Judge for re-decision in accordance with the views expressed in LPA No. 402 of 1988, as apparently the writ-petitioner had approached this Court on 9th May, 1979 challenging the order dated 17th March, 1979 promoting the private respondents, well in time.

(ii) CWP No. 1816 of 1987 is dismissed for the reasons given in LPA No. 402 of 1988, the delay being of nearly six years in approaching this Court.

(iii) CWP No. 1817 of 1987 is dismissed, for the delay in approaching the Court is almost 10 years.

(iv) CWP No. 1845 of 1987 is also dismissed, for the delay in approaching the Court is almost 12 years.

In these cases, the parties are left to bear their own costs.

Category 4:

(i) CWP No. 3085 of 1988 is dismissed as infructuous because of the dismissal of CWP No. 1903 of 1987, as a result of acceptance of LPA No. 402 of 1988. No costs.

(ii) CWP No. 4138 of 1988 is dismissed *in limine* because of the dismissal of CWP No. 1903 of 1987 as a result of acceptance of LPA No. 402 of 1988. No costs.

Punjab State Electricity Board, Patiala and another *v.* Ashok Kumar Sehgal and others (M. M. Punchhi, J.)

Category 5:

(62) The Letters Patent appellants in LPA No. 283 of 1988 were the writ-petitioners in CWP No. 1599 of 1985. It was dismissed by D. V. Sehgal, J. relying on an earlier decision in *Jatinder Singh and others v. Punjab State Electricity Board and others*, (30). The appellants herein as also the private respondents Nos. 2 to 21 joined as Sectional Officers (now designated as Junior Engineer (Civil) Grade-I) on various dates. *Inter se* seniority was shown by means of a table in the writ petition. Challenge to the vires was made to regulation 10 of the Punjab State Electricity Board Service of Engineers (Civil) Regulations, 1965. Sub-regulation (4) thereof provides that 9 per cent of the cadre posts of Asstt. Engineers (Civil) shall be reserved for departmental employees (Technical Subordinates and Drawing Staff) who while in the service of the Board have qualified Sections (A) and (B) of A.M.I.E. Examination and have completed three years' service. This sub-regulation is effective from April 15, 1983. Prior to that it was slightly different, inasmuch as one qualified for promotion on completion of three years service after qualifying the A.M.I.E. examination. Sub-regulation (6) says that 9 per cent of the posts of Asstt. Engineers (Civil) may be reserved for promotion from amongst the graduates in Civil Engineering/ AMIE qualified hands who possess the qualification at the time of appointment as Technical Subordinate in the Board after completing 3 years' service in that capacity. Challenge was also made to the promotion of the private respondents on the ground that Regulation 10(4)(6) of the Regulations is *ultra vires* Articles 14 and 16 of the Constitution being discriminatory, arbitrary and unreasonable. The other ground raised in the petition with regard to the regulations being violative of an earlier order dated July 18, 1968, and the principles under the proviso to section 82(6) of the Punjab Reorganisation Act, 1966, was not even adverted to by learned counsel for the petitioners. The learned Single Judge had dismissed the writ petition placing reliance on his earlier decision in *Jatinder Singh's case* (supra) in which he had upheld vires of a similar Regulation (wrongly 9) 10(7) and 10(9) of the Punjab State Electricity Board Service of Engineers (Electrical) Regulations, 1965. By providing different conditions of eligibility for Sectional Officers possessing Degree qualification at the time of the entry and the others

(30) 1986 (1) SLR 692.

acquiring degree while in service, cannot by itself be said as violative of Articles 14 and 16 of the Constitution. In *Ganga Ram and others* v. *Union of India and others*, (31), the Supreme Court has ruled that the State is legitimately empowered to frame rules of classification for securing the requisite standard of efficiency in services and the classification need not be scientifically perfect or logically complete. In applying the wide language of Articles 14 and 16 to concrete cases a doctrinaire approach should be avoided and the matter considered in a practical way, of course without whittling down the equality clauses. On that principle are based *S. L. Sachdev's case* (supra), *Roop Chand Adlakha's case* and *Ravinder Kumar Sharma's case* (supra). In *Roop Chand Adlakha's case* (supra) the State was held not precluded from conferring eligibility on diploma-holders conditioning it by other requirements which included certain quantum of service, experience, consistent with the requirements of promotional posts and in the interest of efficiency of the service. There the quota rule based on those considerations was upheld. It had been ruled in that case that unless the provision is shown to be arbitrary, capricious, or to bring about grossly unfair results, judicial policy should be one of judicial-restraint. The prescriptions may be somewhat cumbersome or produce some hardship in their application in some individual cases; but they cannot be struck down as unreasonable, capricious or arbitrary. *Roop Chand Adlakha's case* (supra) is a clear answer to the case of the writ-petitioners and also for the analysis which we have done highlighting *Ravinder Kumar Sharma's case* (supra). Accordingly, we hold that the writ petition was rightly dismissed by the learned Single Judge. Thus, we dismiss LPA No. 283 of 1988.

No costs.

(63) CWP Nos. 363, 811, 1744 and 3450 of 1987 are also dismissed in view of the dismissal of LPA No. 283 of 1988. The parties will bear their own costs.

Category 6 :

On the dismissal of CWP No. 1903 of 1987, on the acceptance of LPA No. 402 of 1988, the decision in *Kuldip Singh's case* (CWP No. 8167 of 1987) decided on February 10, 1988 read with the order passed in Review Application No. 27 of

(31) 1970 SLR 755.

1989 on March 10, 1989, should stand automatically reviewed, and thus the said matter be placed before the Motion Bench for a fresh hearing.

(64) With these end-results, these 23 matters stand disposed of.

RNR

33854 HC—Govt. Press, U.T. Chd.