COURT MATTER

183

भारत सरकार/GOVERNMENT OF INDIA
वित्त मंत्रालय/MINISTRY OF FINANCE
आयकर विभाग/Income Tax Department
10 FEB 2015
प्रधान मुख्य आयकर आयुक्त का कार्यालय
O/o.Pr.Chief Commissioner of Income Tax
आ.प्र.एवं तेलंगाना/A.P. & Telangana
10th Floor "C" Block, IT Towers,
To A.C. Gachibowli

F.No. C-18011(S)/75/2014-SO(V&L)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

विधिक/LEGAL
11 FEB 2015
CCIT, Hyderabad

New Delhi, the 27.01.2015

3966

All Pr. CCsIT/DGIT(HRD)

Subject: O.A.No. 3049/2013 filed by Rajeev Kesarwni DCIT & Others Vs UoI and Ors. before CAT, PB, New Delhi reg.

Sir

I am directed to enclose herewith a copy of Order dated 18.12.2014 passed by the Hon'ble CAT, Principal Bench, New Delhi in the OA No. 3049/2013 filed by the Shri Rajeev Kesarwani vide which the Tribunal has **dismissed the OA.** The Hon'ble Tribunal has observed as under:

> *"... The major issues framed have been consistently decided against the applicants, We have found that the IRS Rules 1988 provide for 4 years service in the Junior Scale as a necessary pre-requisite for promotion to the Senior Scale. The IRS Rules do not provide for promotion from the date of vacancy arising. The judgments relied upon by the applicants are not applicable to the instant OA. We are aware of the facts that ours is the court guided by principles of natural justice and not of equity nor a court of records. Ours is a job to implement the laws as they exits.*
>
> *Under the present circumstances and in view of the findings in respect of the individual issues, we find the OA being misplaced and based upon incorrect assumptions and thus, the same is dismissed."*

It is requested that the CAT's Order may be circulated for information.

Encl: As above

Yours faithfully,

(R. K. Sharma)
Under Secretary (V&L)-II
Tel. 011-23093526

CAT MATTER

F.No. 338/(Lit.I)/CAT/321/2014-15/1497

OFFICE OF THE
Pr CHIEF COMMISSIONER OF INCOME TAX
DELHI-1, C.R.BUILDING, I.P.ESTATE
NEW DELHI

Dated:05.01.2015

To

The Jt. CIT (OSD) (V&L),
CBDT, North Block
New Delhi

Madam,

Subject: OA No 3049/2013 filed by Shri Rajeev Kesarwani & Ors vs Union of India & Ors - before the Hon'ble CAT, PB, Delhi – regarding

****

Kindly refer to the subject cited above.

In this regard, I am directed to forward herewith a copy of Shri R.N.Singh, CGSC's letter dated 29.12.2014 alongwith copy of judgement/order dated 18.12.2014 passed by Hon'ble CAT for kind information and record. The Standing Counsel has stated that the Hon'ble Tribunal has dismissed the above mentioned OA vide its order dated 18.12.2014.

Yours faithfully,

Encl: As above.

(D.S.Rathi)
Dy Commissioner of Income Tax
(HQ Litigation), New Delhi

9.1.15
Forwarded
140/2015-V&L
9/1/15

R.N. SINGH, Advocate

(Regn No.D 258/....)

Standing Counsel for Railways(CAT)
Sr. Central Government Counsel(CAT)
Standing Counsel for ICMR (Delhi High Court & CAT)
Standing Counsel for NDMC(CAT)
Addl. Standing Counsel for SDMC(Delhi High Court)
Chamber: 540-541, Lawyers' Chamber, Patiala House Courts, New Delhi-110001.
Tel. No.23386464, 23386565(Off); 26302216(R); 23386565(Fax)
E-mail: singhadvocate@hotmail.com

Ref.No.13626/14

Date: 29.12.2014

The Dy. Commissioner of Income Tax(OSD)(Hqrs-Litigation),
Office of the Pr. Chief Commissioner of Income Tax,
C.R. Building,
New Delhi-110002.

Subject: OA No.3049/2013 titled "Shri Rajeev Kesarwani & Ors. Vs. Union of India & Ors.", before CAT, PB, New Delhi.

Reference: Your letter No.340(Lit.I)/CAT/321/2013-14/1293 dated 3.2.2014.

Sir,

This is to refer to my letter of even number dated 16.8.2014 and to confirm that the Tribunal has subsequently dismissed the OA vide order/judgement dated 18.12.2014. A certified copy of the order/judgement, under reference, is enclosed herewith for your reference, records and necessary action.

A bill towards professional fee and expenses in the matter is enclosed herewith for payment/reimbursement.

Thanking you,

Yours faithfully,

(R.N. Singh)

Encls: As above.

कार्यालय प्रधान मुख्य आयकर आयुक्त
आयकर उप आयुक्त (मुख्यालय) हवाट, नई दिल्ली
31 DEC 2014
डायरी सं0 1767

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

55395

61/35,
Copernicus Marg,
New Delhi
Date: 23-12-2014

From
The Principal Registrar
Central Administrative Tribunal
Principal Bench New Delhi

To

1 Sh. S.C. Saxena, Counsel for the Applicant,
55, Lok Vihar Appts., Vikas Puri,
New Delhi - 110018.

2 Sh. R.N. Singh with Sh. Amit ~~Sinh~~ Sinha,
Counsel for the Respondents, CAT. Bar
Room, New Delhi.

Regn :OA No. 3049/2013

Sh. Rajeev Kesarwani & ors
Applicant(s)

Versus

Union of India & Anr
Respondent(s)

Sir,

I am directed to forward herewith a copy of Judgment/Order dated: 18-12-2014 passed by this Tribunal in the above mentioned case for information and necessary action if any.

Please acknowledge the receipt

Yours faithfully

Section Officer-(J-II)
For Principal Registrar

Encl: as above

Central Administrative Tribunal

29/12/14

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 3049/2013

Reserved on: 07.08.2014
Pronounced on: 18.12.2014

Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Dr. B.K. Sinha, Member (A)

1. Sh. Rajeev Kesarwani
s/o Sh. Saroj Kumar Kesarwani,
R/o 702, Kunj Apt., Gogatwadi,
Goregaon (E), Mumbai – 400 063.

2. Shri Satya Prakash R. Singh
S/o Sh. Rajpati Singh
R/o 702, 403, Romil CHS,
Sector 4, Charkop, Kandivili (W),
Mumbai-400067.

3 Shri Dharamvir Yadav
S/o Sh. Dalip Singh Yadav
R/o B-108, Gurudristi CHS,
SVP Nagar, Andheri (W),
Mumbai – 400 703.

4. Ms. Sudha Ramachandran
D/o Sh. K.R. Ramaswamy
R/o 2/1, Maharaja CHS, Sector-3,
Vashi, Navi Mumbai- 400 703.

5. Mohd. Javed
S/o Late Sh. Adam Suleman
R/o 1202, Lake View-3,
Royal Palms Estate, Aarey Colony,
Goregaon (E), Mumbai-400 065.

6. Ms. Agnes Thoms
R/o Koparkhairane,
Navi Mumbai.

7 Shri V. Murlidharan,
S/o Sh. S. Vaidyanathan,
R/o E-302, Shankara Colony,
PL Lokhande Marg, Chembur,
Mumbai.

8. Ms. Beena Menon
D/o Sh. V. Ramakrishnan Menon,
R/o B-2/105, Sukhsagar Apt.,
Gandhiawala Compound,
Dr. D.B.B. Road, Bombay Central,
Mumbai – 400 008.

9. Sh. Anil Kumar Das
S/o Sh. Bansh R. Das
R/o 301, Bldg., 24, Income Tax,
New Link Road, Oshiwara,
Mumabi-400 053. ...Applicants

(By Advocate: Shri S.C. Saxena)

Versus

1. Union of India through
Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.

2. The Chairman,
Central Board of Direct Taxes,
Department of Revenue,
North Block, New Delhi. ...Respondents

(By Advocate: Shri R. N. Singh with Sh. Amit Sinha)

O R D E R

By Dr. B.K. Sinha, Member (A):

The instant Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 impugns Notification dated 17.10.2012 (Annexure A-1) appointing the applicants as Deputy Commissioner of Income Tax (hereinafter referred to as 'DCIT') w.e.f. 17.10.2012 instead of 01.01.2011 as they were appointed against the vacancy

year 2006. In other words, the dispute relates to antedating the date of appointment as DCIT from 17.10.2012 to 01.01.2011.

2. The applicants have prayed for the following relief(s):-

(i) Direct the respondents to consider the case of applicants for promotion as DCIT w.e.f. 01.01.2011 with all consequential benefits.

(ii) Direct the respondents to issue fresh order promoting the applicants as DCIT with effect from 01.01.2011 in modification of the order dated 17.10.2012 with all consequential benefits.

(iii) Award costs to the applicants.

(iv) Pass such other order/orders or issue such direction/directions as may be deemed fit and proper in the interest of justice.

3. The case of the applicants, in brief, is that they were appointed as Assistant Commissioner of Income Tax (hereinafter referred to as 'ACIT') w.e.f. 29.06.2007 against the vacancy year 2006, vide order No.96 of 2007 dated 29.06.2007 (Annexure A-2). By the same order, two persons, namely, S.L. Anuragi and Hiraman Ram were promoted against the vacancy year 2005-06. The appointment of the officers to the post of ACIT and their promotion as DCIT in senior scale of the Indian Revenue Service is covered by the Indian Revenue Service

(Amendment) Rules, 1995 [hereinafter referred to as 'IRS Rules, 1995']. Schedule-II of the IRS Rules, 1995 provides that promotion to the post in question is 100% on the basis of seniority-cum-fitness from amongst the officers in the junior scale with not less than four years of regular service in that grade acting as the feeder cadre. It is the case of the applicants that their promotion as ACIT has been due from the year 2006 under Rule 7(2) of the IRS Rules, 1995. The order appointing the applicants as ACIT had been issued on 29.06.2007 on account of sheer lethargy and inaptitude of the respondents in utter violation of DOP&T OM dated 08.09.1998. Likewise, the applicants have been actually promoted from ACIT to DCIT after 5 years and 5 months of service. As per Schedule-II of the IRS Rules, 1995, the posts in junior scale are filled 50% by promotion on the basis of selection and 50% by direct recruitment. The applicants, therefore, submit in Para 4.5 of the OA that those who were assigned seniority of 2006 were placed senior to the direct recruits of the year 2006. The batch-mates of the applicants were promoted to DCIT w.e.f. 20.06.2012, vide order No. 126/2012 dated 20.06.2012. The applicants further claim that the respondents have since long been following the practice and procedure of giving promotion to ACIT as DCIT after completion of 4

years from the vacancy year against which the officers have been appointed as ACIT. This practice has been affirmed and approved by the Hon'ble High Court of Delhi and this Tribunal in a catena of decisions. The applicants allege that the respondents have ignored this established practice and denied promotion after computing 4 years from the vacancy year 2006 and have promoted them as DCIT w.e.f. 17.10.2012 instead of 01.01.2011. The applicants have relied upon the decision of Jaipur Bench of this Tribunal in case of ***S.K. Shukla versus Union of India & Others*** [OA No. 502/2004 decided on 29.03.2005]. In this case, the applicant had been promoted as ACIT on 07.11.2001 against the promotee quota of 2000 completing 4 years of regular service in 2004 and thereby becoming eligible for promotion as DCIT w.e.f. 01.01.2005. In the said case, there were officers junior to the applicant who had been promoted as DCIT prior to him. In the said case, the Jaipur Bench of this Tribunal, vide order dated 29.03.2005, directed the respondents to consider the case of the applicant for promotion from due date with all consequential benefits. A Writ Petition bearing No. WP(C) No.5885/2005 filed against the aforesaid Tribunal's order was also dismissed by the Hon'ble High Court of Rajasthan, vide order dated 01.11.2006. Accordingly, the order of

promotion of the applicant – S.K. Shukla dated 19.09.2006 was modified to the extent that it was antedated to 01.01.2005 without prejudice to the stand taken by the department in SLP against the order of Rajasthan High Court being filed before the Hon'ble Supreme Court. It is the case of the applicants that the SLP (Civil) No.3087/2005 preferred by the respondents was also dismissed, vide order dated 26.02.2007.

4. The applicants have further relied upon the decision of Principal Bench of this Tribunal in case of ***Swaran Singh Sampla versus Union of India & Others*** [OA No.1850/2010 decided on 28.01.2011] wherein the applicant had sought antedating of his promotion from 01.01.2008 to 01.01.2007. The Tribunal relying upon the decision in ***S.K. Shukla's*** case (supra) which stood affirmed upto the Apex Court directed that the applicant be promoted to the post of DCIT w.e.f. 01.01.2007 with all consequential benefits. This order was challenged by way of WP(C) No.7171/2011 before the Hon'ble High Court of Delhi which, again relying upon the decision in ***S.K. Shukla's*** case (supra) had quelled the challenge.

5. The respondents have filed their counter affidavit wherein they have stated that no cause of action has

accrued to the applicants as no statutory, legal or enforceable right of theirs has been infringed. It is stated that antedating of promotion from the date of eligibility is not permissible in the eyes of law particularly where no junior has been promoted over the senior. The respondents have further submitted that the applicants are residents of and posted in Mumbai, and thus the OA is not maintainable in the Principal Bench in absence of prior permission of the Chairman of the Tribunal in this regard. The respondents have contested the claim of the applicants that they have been given seniority over 2006 direct recruit officers. To the contrary, the applicants are placed below the last direct recruit officers of 2006 batch and, hence, they could not be given seniority over the 2006 batch direct recruit officers. Counter affidavit filed on behalf of the respondents further bears out that the CBDT has never followed the practice of giving promotion to ACIT as DCIT after completion of four years of regular service from the vacancy year. The stand of the Government has always been that the length of service must be computed from the date of promotion and not the date of vacancy. The senior scale is given based on actual length of service which is four years and not from the date of occurrence of vacancy. The respondents have further submitted that the Hon'ble

Supreme Court, while dismissing the SLP No.3087/2007, directed that "***The consideration, however, shall be made in accordance with the rules***". Hence, the decision in ***S.K. Shukla's*** case (supra) cannot be relied upon by the applicants herein as precedent. Likewise, the decision in ***Union of India & Others versus K.B. Rajoria*** [2000 (3) SCC 562] is also not applicable as the case therein was of calculating the qualifying service period in case of a person whose junior had been promoted before him.

6. The applicants have filed rejoinder which largely re-affirms what is stated in the OA. However, the applicants have relied upon the decision of Mumbai Bench of this Tribunal in case of ***Leela Ram Chandran & Others versus Union of India & Others*** [OA No.505/2009 & two connected OAs decided by common order dated 09.10.2013] wherein the Tribunal, following the decision in ***S.K. Shukla's*** case (supra), also granted similar relief of antedating of promotions to the applicants therein, who are 67 in number. The applicants have further relied upon a decision of Hon'ble High Court of Delhi in ***Dr. Sahadeva Singh versus Union of India & Others*** [WP(C) No.5549/2007 decided on 28.02.2012] granting similar relief.

7. We have carefully gone through the pleadings of the parties as also the documents adduced and the case law produced by them. We have also heard the learned counsel for the parties on the basis of which the following issues arise for determination of this case:-

1. *Whether any cause of action has accrued to the applicants to institute the instant Application?*

2. *Whether the grant of promotion from the date of vacancy is permissible as a legal precedent in the service jurisprudence?*

3. *Whether the cases cited by the applicants form a binding legal precedence to the instant Application.*

4. *What relief, if any, could be granted to the applicants?*

8. Insofar as the first of the issues is concerned, the Law of Lexicon provides as under:-

> *"The element of a cause of action are: first, the breach of duty owing by one person to another; second the damage resulting to the other from the breach". The commission or omission of an act by the defendant, and damage to the plaintiff in consequence thereof, must unite to give a good cause of action. No one of these facts by itself is a cause of action.*

The fact or combination of acts which gives rise to a right to sue [S.20 and O.VII, R.1 (e), C.P.C. (5 of 1908).

The expression "cause of action" in S.2 of C.P.C. (5 of 1908) cannot be taken in its literal and most restricted sense. It must be construed with reference rather to the substance than to the form of action. (1875) 2 IA 283; IC 144 (146): 25 WR 1 : 3 Sar 559 : 3 Suth 213 : (1873) Sup IA 212: 12 BLR 304 : 20 WR 377 : 3 Sar 285 : 2 Suth 899 : (1884) 12 IA 23: 11 C 301 (308 : 4 Sar 602 : (1878) 5 IA 149 : 4 C. 190 (198-9) : 3 CLR 31 : 3 Sar 827 : 3 Suth 540 : 1930 Mad 173 : 58 MLJ 349; 'good cause of action' can mean no more than 'cause of action' and the word 'good' is that connection is clearly superfluous. The expression "cause of action" refers to the entire set of facts that gives rise to an enforceable claim or "everything which if not proved gives the defendant an immediate right to judgment, every fact which is material to be proved to entitle the plaintiff to succeed, every fact which the defendant could have a right to traverse."

9. In *Y. Abraham Ajith & Others versus Inspector of Police, Chennai and Another* [2004 (8) SCC 100], the Hon'ble Supreme Court has held as under:-

"The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the proceeding including not only the alleged infraction, but also the infraction coupled with the right itself. Compendiously the expression means every fact, which it would be necessary for the

complainant to prove, if traversed, in order to support his right or grievance to the judgment of the Court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove such fact, comprises in "cause of action".

10. In ***Kusum Ingots & Alloys Ltd. versus Union of India & Others*** [2004 (6) SCC 254], the Hon'ble Supreme Court has held as under:-

"6. that Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitute the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted inter alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.

7. Clause (2) of Article 226 of the Constitution of India reads thus:

"(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or

the residence of such person is not within those territories."

8. Section 20(c) of the Code of Civil Procedure reads as under :

"20 OTHER SUITS TO BE INSTITUTED WHERE DEFENDANT RESIDE OR CAUSE OF ACTION ARISES.

Subject to the limitation aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

(c) the cause of action, wholly or in part, arises."

11. In the instant case, we find that the applicants are claiming that their promotion has been wrongly given from 17.10.2012 instead of 01.01.2011 on account of which they stand to suffer a permanent injury in the shape of loss of 22 months in *domino effect* over the course of remaining years of their service. The applicants have pleaded the ground of infringement of the rules in Schedule-II of the IRS Rules, 1995 on account of which this injury is being caused to them. They have also pleaded that the remedy they have sought is covered under a series of decisions which have been totally overlooked by the respondents and are being applied only in cases where the applicants individually or in groups are approaching the Hon'ble Courts.

12. The fact that the term "cause of action" having not been defined anywhere in the Acts but being literally used gives a wide handle to the courts to interpret this term. We are liable to interpret it literally in favour of the applicants for the simple reason that the grounds that they have pleaded cause an actionable wrong and thus liable to rectification by orders of this Tribunal. We are not to forget that ours is a court guided by the principles of natural justice and is not encompassed with so many provisions of law. Therefore, we interpret it simplistically that anything asserted and, if proved, gives rise to some remedy from this Tribunal under the rules constitutes a valid cause of action. In the instant case, the pleadings and the relief(s) constitute a remedial injury and, hence, we are inclined to treat this as a cause of action. Thus, this issue is accordingly decided in favour of the applicants and against the respondents.

13. Insofar as the second of the issues is concerned, the claim of the applicants is that they became eligible for promotion as DCIT w.e.f. 01.01.2011 instead of 17.10.2012. Therefore, their promotion is liable to be antedated from the date of eligibility. For this, the learned counsel for the applicants has relied upon a series of decisions of various courts. On the other hand, the

arguments of the respondents are that antedating of promotion from the date of eligibility is impermissible in law. Therefore, we start by examining the general provisions of law. The promotion of the applicants is admittedly governed by the IRS Rules, 1995. In Schedule-II of the Rules *ibid,* the promotion to senior scale is to be made 100% on the basis of seniority-cum-fitness and officers in the junior scale with not less than 4 years of regular service in that grade are eligible for being considered for promotion. There is no dispute regarding facts. The respondents have rebutted the claim of the applicants that they had been placed in the promotion quota of 2006 above the direct recruits. Rather, they have stated that the applicants were placed below the direct recruits of 2006. In this regard, we refer to Rule 9 (iii) of the IRS Rules, 1995, which provides as under:-

> ***"9 (iii) the relative seniority among the promotes and the direct recruits shall be in the ratio of 1:1 and the same shall be so determined and regulated in accordance with roster maintained for the purpose which shall follow the following sequence, namely:-***
>
> ***(a) promotee;***
> ***(b) direct recruit;***
> ***(c) promotee;***
> ***(d) Direct recruit and so on."***

14. In view of the above rule position, the question of applicants being placed above the direct recruits of 2006 does not arise. Since the seniority list for the relevant year i.e. 2004 onwards is not present before us, we are not in a position to conclusively hold where the applicants stand. However, since the statement of the respondents is on affidavit, we deem it to be correct.

15. This Bench was faced with the similar question as to whether the promotion would be given from the date of vacancy or from the date of eligibility in ***Tushar Ranjan Mohanty versus Union of India & Others*** [OA Nos.2723/2012 & 3782/2012 decided by a common order dated 23.09.2014] wherein the Tribunal considered the judgment of Hon'ble High Court of Delhi in ***Union of India versus Rajendra Roy and Others*** [WP(C) No.20812/2007 decided on 12.01.2007] as under:-

> ***"In the case of Union of India versus Rajendra Roy and Others [WP(C) No.20812/2007 decided on 12.01.2007], the Hon'ble High Court of Delhi was faced with an identical issue i.e. challenge to the order of this Tribunal dated 08.07.2005 in OA No. 192/2005 directing the petitioners to consider the respondents for promotion to the JAG from the date on which the vacancy occurs on his turn. The question with which the Hon'ble High Court was faced was whether the respondent, who had superannuated before the consideration of his case for promotion by the DPC, could be granted promotion on a***

notional basis, by requiring his case to be considered by the DPC, as and when it is held, and in the event of his being empanelled by the DPC, from the date the vacancy against which he could be promoted becomes available. The Tribunal answered this question in favour of the respondents. The Hon'ble High Court had considered the decisions of the Hon'ble Supreme Court in the matter of Union of India versus K.K. Vadhera and Others [AIR 1990 (SC) 442] and Baij Nath Sharma versus Hon'ble Rajasthan High Court at Jodhpur and Another [1988 SCC 1754], wherein the Hon'ble Supreme Court has held as under:-

> *"We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post fall vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the Creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgment of the Tribunal."*

In the said order this very Bench after having considered the decision in cases of ***Baij Nath Sharma versus Hon'ble***

Rajasthan High Court at Jodhpur and Another [1988 SCC 1754]; ***Union of India versus K.K. Vadhera and Others*** [AIR 1990 (SC) 442] and ***Hamesh Mahajan versus Haryana Vidyut Prasaran Nigam Limited and Others*** [2004(5)SLR 276] arrived at the conclusion that there was nothing in the judgment which would sustain the plea that promotion be given from the date of vacancy arising.

16. Further, in case of ***P. Sudhakar Rao & Others versus U. Govinda Rao & Others*** [2013 (8) SCC 693], the Hon'ble Supreme Court was faced with an identical question as to whether promotion would accrue from the date of eligibility/vacancy. Three-Judge Bench of the Hon'ble Supreme Court headed by Mr. Justice R.M. Lodha in the aforesaid case held as under:-

> ***"48. More recently, and finally, in Pawan Pratap Singh v. Reevan Singh, (2011) 3 SCC 267 all relevant precedents on the subject were considered, including the Constitution Bench decision in - Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra, (1990) 2 SCC 715 and the legal position summarized (by Lodha, J.) as follows:***
>
> > ***"(i) The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.***

(ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime."

49. In a separate but concurring opinion, Aftab Alam, J. reiterated the position but referred to some more precedents on the subject. It was then said: -

"To the decisions referred to on this point in the main judgment I may add just one more in Suraj Parkash Gupta v.

State of J&K [(2000) 7 SCC 561]. The decision relates to a dispute of seniority between direct recruits and promotees but in that case the Court considered the question of antedating the date of recruitment on the ground that the vacancy against which the appointment was made had arisen long ago. In SCC para 18 of the decision the Court framed one of the points arising for consideration in the case as follows: (SCC p. 578)

"18. ... (4) Whether the direct recruits could claim a retrospective date of recruitment from the date on which the post in direct recruitment was available, even though the direct recruit was not appointed by that date and was appointed long thereafter?" This Court answered the question in the following terms: (Suraj Parkash Gupta case SCC p. 599, paras 80-81) "Point 4 Direct recruits cannot claim appointment from the date of vacancy in quota before their selection 80. We have next to refer to one other contention raised by the respondent direct recruits. They claimed that the direct recruitment appointment can be antedated from the date of occurrence of a vacancy in the direct recruitment quota, even if on that date the said person was not directly recruited. It was submitted that if the promotees occupied the quota belonging to direct recruits they had to be pushed down, whenever direct recruitment was made. Once they were so pushed down, even if the direct recruit came later, he should be put in the direct recruit slot from the date on which such a slot was available under the direct recruitment quota. 81. This contention, in our view, cannot be accepted. The reason as to why this argument is wrong is that in service jurisprudence, a direct recruit can claim seniority only from the date of his regular appointment. He cannot

claim seniority from a date when he was not borne in the service. - This principle is well settled. In N.K. Chauhan v. State of Gujarat [(1977) 1 SCC 308], Krishna Iyer, J. stated: (SCC p. 325, para 32) Later direct recruit cannot claim deemed dates of appointment for seniority with effect from the time when direct recruitment vacancy arose. Seniority will depend upon length of service. Again, in A. Janardhana v. Union of India [(1983) 3 SCC 601] it was held that a later direct recruit cannot claim seniority from a date before his birth in the service or when he was in school or college. Similarly it was pointed out in A.N. Pathak v. Secy. to the Govt. [(1983) 3 SCC 601] that slots cannot be kept reserved for [the] direct recruits for retrospective appointments."

xxx xxx xxx

53. For the reasons aforesaid, we see no occasion for interfering with the view taken by the High Court to the effect that the grant of retrospective seniority to Supervisors on their appointment as Junior Engineers violates Article 14 of the Constitution. The weightage of service given to the Supervisors can be taken advantage of only for the purpose of eligibility for promotion to the post of Assistant Engineer. The weightage cannot be utilized for obtaining retrospective seniority over and above the existing Junior Engineers."

17. This decision further stands support by the decision in ***Bhupendra Nath Hazarika & Another versus State of Assam & Others*** [2013 (2) SCC 516]. Likewise, in ***I. Chuba Jamir & Others versus State of Nagaland & Others*** [2009 (15) SCC 169], the Hon'ble Supreme Court has held as under:-

"19. We may also add here that the validity and legality of the Government Order and the Notification effecting the encadrement of the post held by respondent no.3 in the PWD and Housing Department with the E and S Service does not seem to have been squarely challenged before the High Court. One can understand that the Court, on scrutiny, might find that the encadrement was wrong and illegal. In that case the Court would undoubtedly strike down the encadrement resulting in the posting of respondent No. 3 as Assistant Director in the E & S Service notwithstanding the fact that the decision was taken at the highest level in the government and the notification was issued with the approval of the highest government functionary. But the learned Single Judge accepted the validity of the encadrement and yet proceeded to direct the deemed promotion of the appellants-writ petitioners as Assistant Directors from a date prior to the appointment of respondent no.3 as Assistant Director. The only ground for passing such extra ordinary order was that when vacancies arose in the post of Assistant Director the appellants-writ petitioners were eligible for promotion. It is elementary and well settled that mere eligibility does not confer any right for promotion. The direction of the learned Single Judge, viewed from any angle was unsustainable. The Division Bench was perfectly right in setting aside the order of the learned Single Judge."

18. It, thus, emerges clearly from the afore decisions of the Hon'ble Supreme Court that promotion from the date of eligibility is impermissible as a general rule. It is only permissible where the Rules so provide. In the instant case we have seen that there are no Rules which provide for

promotion from the date of eligibility. In fact, not even an inference is to be drawn to this effect. The present issue under consideration is accordingly answered against the applicant.

19. We now come to grip with the second of the issues. The applicants have principally relied upon three decided cases namely ***Union of India vs KB Rajoria*** *2000(3) SCC 562,* ***Dr Sahdeva Singh vs UoI & Ors*** *WP (C) 5549/2007* and a decision by the Bombay Bench of this Tribunal in ***OA Nos. 505/2009, 810/2011 and 57/2010*** decided vide the decision dated 9.10.2013. It goes without saying that the Anglo-American common-law traditions are based upon the doctrine of Stare Decisis ("stand by decided matters"), which requires a court to look into the past legal decisions for guidance, to decide a case before it. This means that the legal rules applied to a prior case with facts similar to those of the case before a court should be applied to resolve the legal dispute. It is a well accepted legal position that each case is a legal authority in itself. The use of legal precedents is justified on the grounds of providing predictability, stability, fairness and stability in law. However, the judicial system maintains fidelity to the application of caution. A

case can only be accepted as a binding legal precedent when it fulfills a certain pre-requisite legal conditions. It is not that every legal decision of superior court will act as a binding legal precedent. The Hon'ble Supreme Court of India in ***Municipal Corporation of Delhi vs Gurnam Kaur 1989 (1) SCC 101*** has clearly laid down the basic postulates for accepting a decision as a precedent. The Hon'ble Supreme Court has held:

> ***"12. In Gerard v. Worth of Paris Ltd. (k). [1936] 2 All E.R. 905, the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the Court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in Lancaster Motor Co. (London) Ltd. v. Bremith, Ltd. [1941] 1 KB 675, the Court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. We went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully***

argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority".

20. In the case of ***Divisional Commissioner KSRTC vs Mahadeo Shetty & Anr*** *2003(7) SCC 197,* the Hon'ble Supreme Court has held as under:-

"21. So far as Nagesha's case (supra) relied upon by the claimant is concerned, it is only to be noted that the decision does not indicate the basis for fixing of the quantum as a lump sum was fixed by the Court. The decision ordinarily is a decision on the case before the Court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Therefore, while applying the decision to a later case, the Court dealing with it should carefully try to ascertain the principle laid down by the previous decision. A decision often takes its colour from the question involved in the case in which it is rendered. The scope and authority of a precedent should never be expended unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty as without an investigation into the facts, it cannot be assumed whether a similar direction must or ought to be made as measure of social justice. Precedents sub silentio and without argument are of no moment. Mere casual expression carries no weight at all. Nor every passing expression

of a Judge, however eminent, can be treated as an ex cathedra statement having the weight of authority."

21. The Hon'ble Supreme Court further developed the idea in **Bharat Petroleum Corporation Ltd. & Anr. Vs N.R. Vairamani & Anr.**, 2004 (8) SCC 579 by laying down that in order to draw a precedent, the facts should be gone into and found matching. The Hon'ble Supreme Court has held as under:-

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed:

" The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

10. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said, "Lord Atkin's speech.....is not to be treated as if it was a statute definition it will require qualification in new circumstances." Megarry, J in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said:

" There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

" Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

[Emphasis Added]

22. The afore view is further reinforced in a decision of the Hon'ble Supreme Court in ***Bank of India & Anr vs K Mohandas & Ors 2009(5) SCC 313*** *wherein it has been* held as under:

> ***54. A word about precedents, before we deal with the aforesaid observations. The classic statement of Earl of Halsbury , L.C. in Quinn vs. Leathem, 1901 AC 495, is worth recapitulating first:***
>
> ***"Before discussing Allen v. Flood (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make; and one is to repeat what I have very often said before -that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logically at all."***
>
> ***This Court has in long line of cases followed the aforesaid statement of law.***
>
> ***55. In State of Orissa vs. Sudhansu Sekhar Misra, AIR 1968 SC 647, it was observed:***
>
> ***".... A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically***

follows from the various observations made in it."

56. In the words of Lord Denning:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

57. It was highlighted by this Court in Ambica Quarry Works Vs. State of Gujarat,(1987) 1 SCC 213:

"18....The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

58. In Bhavnagar University vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111, this Court held that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

59. This Court in Bharat Petroleum Corporation Ltd. vs. N.R. Vairamani, (2004) 8 SCC 579, emphasized that the Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which the reliance is placed. It was further observed that the judgments of courts are not to be construed as statutes and the observations must be read in the context in which they appear to have been stated. The Court went on to say that circumstantial applicability, one additional or different fact

may make a word of difference between conclusions in two cases."

23. The following principles can be culled out from the above decisions:-

(a) Every case is an authority in itself for what it decides;

(b) Previous legal decisions are applicable as legal precedents but only after they have satisfied a set of stringent legal conditions.

(c) Judgments of courts are not statutes and must only be read in the context that they have been established.

(d) The two sets of decisions must involve common principles of law.

(e) The ratio of the decisions must be understood in the particular set of background.

(f) A case in order to be cited as a legal precedent must follow identical set of circumstances. A little variation in facts or additional facts may make a lot of difference in the precedential value of the decision.

(g) An obiter dicta or a casual observation may not be accepted as valid precedent.

(h) The court deciding the case is the best judge of what constitutes an acceptable precedent.

24. In the backdrop of the above cardinal principles, we examine the validity of the principles granted. As stated a good deal of reliance has been placed by the applicants on the case of ***UoI & Ors vs KB Rajoria (supra).*** In this case the appellant 4 had been notionally promoted to the post of Additional Director General (Works) notionally from 22.2.1995 within the terms of instructions in OM dated 10.6.1998. In the meantime the post of Director General (Works) became vacant to be filled up by selection from amongst *inter alia* the Additional Director General (Works). Since the appellant 4 had been granted notional promotion from 1.5.1995, his name was considered for the post of Director General (Works) in the DPC meeting in January 1995. The respondents' case was not that Krishnamoorti (appellant 4) was ineligible to be considered for promotion but he too was entitled to retrospective promotion as Additional Director General and was, therefore, entitled to be considered for further promotion as Director General. Here, the case of the applicants is differed in the facts inasmuch as they claim promotion from 29.6.2006 against the vacancy year 2006. Thus, the divergence in material facts in the two cases is too glaring to be ignored and we are compelled to hold that the judgment in the case of **KB Rajoria** constitutes an insufficient legal precedent.

25. The second judgment on which the applicants have placed their reliance is that of ***Sahadev Singh vs UoI & Ors (Supra)*** where the petitioners were promoted Assistant Commissioners (Crops) who were to be considered for promotion to the post of Deputy Commissioner (Crops). The Recruitment Rules for the post of Deputy Commissioner (Crops) provided that an Assistant Engineer (Crops) with 5 years of regular service with the Degree of Agriculture and Post Graduate in Agriculture with specialization in Agronomy/Plant Breeding and Genetics from a recognised university could be considered for the post of Deputy Commissioner (Crops). Admittedly, the petitioners in that case were not eligible for the 2 vacancies that arose on 4.4.2004 and 15.5.2004 for the reason of not meeting the qualifying service clause. OA No 2125/2005 was filed by the petitioners seeking promotion w.e.f. 28.6.2004. No DPC was held for the year 2005 but instead it was held in the year 2006 promoting the petitioners as Deputy Commissioner (Crops) w.e.f. 4.10.2006. The said OA no. 2125/2005 was declined on the ground that though an employee has the right to be considered for promotion he had no right to demand promotion. It was admitted position that none was eligible in the year 2005; 1st of

January was the relevant date for reckoning; the petitioners were eligible for being considered for the year 2005; and no junior had been promoted over their heads. The Hon'ble Delhi High Court considered the OM Nos 22011/9/98-Estt. (D) dated 8.9.1998 read with OM of even No. dated 13.10.1998 prescribing a model calendar for promotion and laying down the consequences of deviance therefrom vide OM dated 14.12.2000 . The Hon'ble High Court further examined the decision of the Hon'ble Supreme Court in ***Y.V. Rangaiah vs J Srinivasa Rao*** 1983(3) SCC 284 which was also referred in ***State of Rajasthan vs R Dayal & Ors*** 1997 (10) SCC 419. In the case of YV Rangaiah there was delay in preparation of panel and in the meantime the Recruitment Rules had been changed. The Hon'ble Court ruled that the vacancies were required to be filled up under the extant Rules when they arose. In ***P Ganeshwar Rao & Ors vs the State of Andhra Pradesh & Ors*** 1988 (Supp) SCC 740, the Rules before they were amended prescribed that 37 ½ % of the total number of vacancies (both substantive as well as temporary) to be filled by direct recruitment. The amended Rules provided that only the substantive vacancies, to the said extent, shall be filled in by direct recruitment. Rejecting the contention that only the substantive

vacancies in the above-referred ratio were to be filled by direct recruitment, Supreme Court inter alia held as under:

> *"It is clear from the Special Rules as they were in force prior to the amendment on 28.4.1980 that it was open to the State Government to fill 37-1/2 per cent of the vacancies (both substantive and temporary) in the cadre of Assistant Engineers by direct recruitment. It is also not in dispute that during the years 1978 and 1979 the position of the vacancies was such that it was permissible for the State Government to appoint 51 Assistant Engineers by direct recruitment. The only question which has now to be considered is whether the amendment made on 28.4.1980 to the Special Rules applied only to the vacancies that arose after the date on which the amendment came into force or whether it applied to the vacancies which had arisen before the said date also. The crucial words in the Explanation which was introduced by way of amendment in the Special Rules on 28.4.1980 were "37-1/2 per cent of the substantive vacancies arising in the category of Assistant Engineers shall be filled by the direct recruitment". If the above clause had read "37- 1/2 per cent of the substantive vacancies in the category of Assistant Engineers shall be filled by the direct recruitment" perhaps there would not have been much room for discussion. The said clause then would have applied even to the vacancies which had arisen prior to the date of the amendment but which had not been filled up before that date. We feel that there is much force in the submission made on behalf of the appellants and the State Government that the introduction of the word 'arising' in the above clause made it applicable only to those vacancies which came into existence subsequent to the date of amendment."*

26. The Hon'ble High Court of Delhi, after having discussed these and a number of other decisions which have been deliberately omitted from citation for the simple reason that they would add to the bulk of the order, summarized the basic principles as follows:

> *"9. The propositions of law that emerge from a combined perusal of the above referred decisions can be summarized as under:*
>
> *(a) The general rule is that the vacancies which exist on the date of amendment of rules have to be filled up in accordance with rules , as they stood prior to amendment, provided the amendment is not retrospective. If the amendment made in the rules is retrospective , even the vacancies that exist on the date of amendment are also required to be filled up as per the amended rules.*
>
> *(b) The competent authority may take a decision to amend the rules and fill up the vacancies in accordance with the amended rules. If such a decision is taken by the competent authority that would justify the delay in making the promotion against the existing vacancies. In such a case, all the vacancies including the vacancies which existed on the date of amendment of the rules can be filled up as per the amended rules.*
>
> *(c) The decision to amend the rules needs to be taken by the authority which is competent to amend the rules and if such a decision is taken by some authority other than the authority competent to amend the rules and the rules are later amended, the vacancies which existed on the date of amendment of the rules have to be filled up in accordance with the rules as they stood prior to amendment."*

27. It thus amply emerges that there are vital differences between the OA under consideration and the cases under reference. In the instant OA there has been no amendment to rules. Hence, the ratio deduced from the cases under reference in ***Dr Sahadeva Singh vs UoI & Ors (supra)*** are not applicable to the facts of this case as the principles involved in the two cases are different. It is on this account we are compelled to hold that as per the principles enunciated by the Hon'ble Supreme Court in ***Municipal Corporation of Delhi vs Gurnam Kaur (supra), Divisional Commissioner KSRTC vs Mahadeo Shetty & Anr (supra),*** **Bharat Petroleum Corporation Ltd. & Anr. Vs N.R. Vairamani & Anr (supra),** ***Bank of India & Anr vs K Mohandas & Ors (supra),*** the decision of the Hon'ble High Court of Delhi in ***Dr Sahadeva Singh vs UoI & Ors (supra)*** does not constitute a binding legal precedent.

28. The last set of cases relate to ***OA Nos. 505/2009, 810/2011*** and ***57/2010*** where the applicants, who were working in post of Deputy Commissioners and Assistant Commissioner, were promoted to the Indian Revenue Service in the Income Tax Department as Assistant Commissioners (Junior Scale) on different dates. In the instant case the applicants seek in effect the antedating of their date of promotion as DCIT from 17.10.2012 to

1.1.2011 which cannot be acceded to till so long as the promotion of the applicants are similarly antedated from 2006 to 1.1.2005. It is significant to note that no prayer has been made for antedating the promotion of the applicants as ACIT from 2006 to 2005 as a part of the main prayers lest it attracts the law of limitation.

29. We further take note of the argument of learned counsel of the respondents that for grant of senior scale the actual length of service, that being of 4 years, is to be reckoned from the date of promotion and not from the date of occurrence of the vacancy. The actual language used in Entry 5 of Schedule II of the IRS Rules 1988 is " ***Officers in the Junior Scale with not less than 4 years of regular service in the Junior Scale.***" This issue already stands resolved in respect to Issue No. 2 that here 'regular service' would imply the service actually rendered in this grade notionally.

30. We further take note of the submission of the respondents that the CBDT had long followed this practice, the reason being that only an officer with the actual qualifying service of 4 years in the Junior scale is eligible for promotion to the Senior Scale and that it has been consistently followed. We are further to take cognizance of

the argument of the respondents that the said SK Shukla was promoted to the senior scale w.e.f. 1.1.2005 in compliance to the orders of this Tribunal dated 28.11.2006 in CA No. 59/2005 passed in OA No.502/2005. The Hon'ble Supreme Court while dismissing the SLP filed against the orders of the Hon'ble High Court vide its order dated 29.3.2005 in respect to the orders in ***OA No.502/2005*** held " ***the consideration, however shall be made in accordance with the Rules."*** Hence, as per the principles culled out earlier in respect of this issue SK Shukla's case (supra) does not constitute a valid and binding legal precedent in this case. The OA Nos. 505/2009, 810/2011 and 57/2010 , as noted have relied upon the order in OA No.502/2005 and so have the others including ***UoI & Anr vs Swaran Singh Sampla WP(C) 7171/2011*** decided on 22.1.2013. Hence, these OAs do not constitute binding legal precedents. The issue is answered accordingly against the applicants.

31. Now we take up issue no.4. It is a well recognised principle of law that a thing required to be done in a particular way can only be done in that way and in none other. In ***Association of Management of Private Colleges vs All India Council for Technical Education***

and Ors. 2013 (8) SCC 271, the Hon'ble Supreme Court has held as under:

> **"The position of law is well settled by this Court that if the Statute prescribes a particular procedure to do an act in a particular way, that act must be done in that manner, otherwise it is not at all done. In the case of Babu Verghese v. Bar Council of Kerala 1999 (3) SCC 422, after referring to this Court's earlier decisions and Privy Council and Chancellor's Court, it was held as under:-**
>
> **31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in *Taylor v. Taylor* which was followed by Lord Roche in *Nazir Ahmad v. King Emperor* who stated as under:-**
>
> **32. This rule has since been approved by this Court in *Rao Shiv Bahadur Singh v. State of U.P.* and again in *Deep Chand v. State of Rajasthan.* These cases were considered by a three-Judge Bench of this Court in State *of U.P. v. Singhara Singh* and the rule laid down in *Nazir Ahmad case* was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law."**

32. The major issues framed have been consistently decided against the applicants. We have found that the IRS Rules 1988 provide for 4 years of regular service in the Junior Scale as a necessary pre-requisite for promotion to the Senior Scale. The IRS Rules do not provide for promotion from the date of vacancy arising.

The judgments relied upon by the applicants are not applicable to the instant OA. We are aware of the facts that ours is the Court guided by principles of natural justice and not of equity nor a court of records. Ours is a job to implement the laws as they exist.

33. Under the present circumstances and in view of the findings in respect of the individual issues, we find the OA being misplaced and based upon incorrect assumptions and thus, the same is dismissed without cost.

(Dr. B.K. Sinha)
Member (A)

(Syed Rafat Alam)
Chairman

/lg/

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(Procedure Rules)
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अनुभाग अधिकारी (न्या.)
Section Officer (J)
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रधान न्यायपीठ, नई दिल्ली
Principal Branch, New Delhi