

A DR. AKSHYA BISOI AND ANOTHER  
v.  
ALL INDIA INSTITUTE OF MEDICAL SCIENCES & OTHERS  
(Writ Petition (Civil) No 1179 of 2017)

B FEBRUARY 06, 2018

**[DIPAK MISRA, CJI, A. M. KHANWILKAR AND  
DR. D.Y. CHANDRACHUD, JJ.]**

*Service Law:*

C *Inter-se Seniority – Determination of – Sought by filing petition  
u/Art. 32 of the Constitution – In respect of the selection to the post  
of ‘Additional Professor’ made in September 2005 – On the basis  
of recommendations of Standing Selection Committee – Held: The  
Policy of 1997 indicates that the gradings given by all the members  
D of the Selection Committee and the technical experts are to be placed  
before Chairman of the Selection Committee and final selection ‘may  
be made’ on the basis of gradings given by the members and the  
experts of the Committee – The Committee, in making final  
recommendation in regard to the order of merit of the candidates,  
E had taken into consideration their performance, their records and  
the opinion of the experts – Therefore, the ranking assigned cannot  
be regarded as being in breach of Policy of 1997 – It would be  
iniquitous to unsettle the position of seniority over twelve years  
after the petitioners and fourth respondent were selected as  
Additional Professors – The delay on the part of the petitioners in  
F seeking recourse to legal remedies, must weigh against them – Delay/  
Laches – Constitution of India – Art. 32.*

**The two petitioners (cardiac surgeons in All India Institute  
of Medical Sciences) seeking a writ of Mandamus directing the  
first respondent to determine their seniority in relation to the  
fourth respondent in terms of a binding Policy of 1997.  
G According to the petitioners at the time of their (petitioners and  
4<sup>th</sup> respondent) selection as ‘Additional Professors’ Grades  
allocated to petitioner No.1 were higher to respondent No.4 as  
one of the Members/Expert Advisers had allocated higher grades  
as compared to respondent No.4 and therefore, would rank senior  
H to respondent No.4.**

**Dismissing the Petition, the Court**

**HELD : 1.** Recruitment to the post of Additional Professor was carried out in 2005, i.e. well over 12 years ago. The petitioners have instituted these proceedings under Article 32 in November 2017 to question the order of ranking made by the Selection Committee on 12 September 2005. There is no cogent explanation for this belated recourse to legal remedies. The petitioners cannot legitimately explain the delay on their part merely by contending that they were representing to the First respondent to remedy their grievances. The petitioners may have believed in good faith that the AIIMS administration would pay heed to their grievances. They had a sympathetic ear of the Union Ministry of Health and Family Welfare. But twelve years is too long a period, by any means, to not seek recourse to judicial remedies. As the narration of facts would indicate, the Governing Body had on 14 April 2012 decided to maintain the order of merit in terms of which the Fourth respondent was ranked first, above the two petitioners. Even thereafter, a three member committee was constituted by the Governing Body in October 2012 and a decision was once again taken on 19 July 2013 to maintain the order of seniority. This was reiterated on 12 May 2014 and 22 June 2016. The petitioners were thus aware of the consistent position which was adopted by the First respondent. The delay on their part in seeking recourse to their legal remedies must weigh against them. At this stage it would be manifestly unfair to unsettle the *inter se* seniority between the three Professors in the CTVS department by reopening the recommendation made by the Selection Committee in 2005. [Para 17] [902-G-H; 903-A-C]

*State of Uttaranchal v. Shiv Charan Singh Bhandari*  
(2013) 12 SCC 179 : [2013] 9 SCR 609 – relied on.

2. As per the 1997 Policy, the gradings allocated by the members of the Selection Committee and the technical experts are to be placed before the Chairman of the Selection Committee and the final selection of the candidates “may be made” on the basis of the gradings/markings of the members of the committee and the technical experts. The expression “may be made” . The judgment of the Delhi High Court in *Dr Dilip Kumar Parida v AIIMS* holds that the view of the experts who are co-opted in the

A selection process is only advisory and that the members of the Standing Selection Committee of AIIMS are not bound by their opinion. This position in the judgment of the Delhi High Court should not be read to suggest that the experts who are co-opted as part of the Selection Committee have no role and that the other members have to decide on the selection, independently of their views. Experts are co-opted in order to ensure that the Selection Committee is broad-based; that the selection is objective; and that the experience and knowledge of experts drawn from outside provides a valuable input in the ultimate decision. The fact that selection ‘may be made’ on the basis of the grading given by the members of the Selection Committee and the technical experts suggests that the determination of merit is not merely a mechanical totalling of grades allotted. The Selection Committee has to act objectively. This undoubtedly requires giving due credence to the view of the experts. But while doing so, it must have due regard to all relevant aspects bearing on the interest of the institution. The Selection Committee has to assess the credentials of the candidates which would include the service profile of the candidate. It is in this sense that the Delhi High Court has to be construed to mean that while the views of the experts co-opted to the Selection Committee constitute a valuable perspective and input, they cannot be regarded as binding. The members of the Selection Committee would have to consider the views of the experts and to evaluate them together with all other relevant circumstances. [Paras 20 and 21] [905-G-H; 907-A-C]

F 3. In the present case, while making its recommendations for appointment to the post of Additional Professor, the Selection Committee had borne in mind the performance of the candidates, their records as well as the opinion of the technical experts. The minutes of the meeting of 12 September 2005 indicate that the views of the technical experts were considered. Hence, the ranking which has been assigned cannot be regarded as being in breach of the policy decision of 1997. It would be iniquitous to unsettle the position of seniority, over twelve years after the petitioners and the Fourth respondent were selected as Additional Professors. Even thereafter, when each of them has

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been promoted as a Professor, it is the Fourth respondent who has been ranked higher than the petitioners. [Para 22] [907-C-G] A

Case Law Reference

[2013] 9 SCR 609 relied on Para 18 B

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 1179 of 2017.

Under Article 32 of the Constitution of India.

K. K. Venugopal, AG, Vikas Singh, Mukul Rohatgi, P. S. Patwalia, Sr. Advs, Nikhil Nayyar, T.V.S. Raghavendra Sreyas, N. Sai Vinod, Dhananjay Baijal, Ms. Smriti Shah, Divyanshu Rai, R. Balasubramanian, Gaurav Sharma, Ms. Aarti Sharma, Snehasish Mukherjee, Gopal Shankar Narayan, Apoorva Agarwala, Ms. Pooja Dhar, Mayank Sapra, Akshay Amritanshu, G. S. Makker, Ms. Veera M., Shrutanjaya Bhardwaj, R. Bala, Ankur Talwar, Aparajit Singh, Ms. Pooja Dhar, Advs for the appearing parties. C D

The Judgment of the Court was delivered by

**DR. D. Y. CHANDRACHUD, J.** 1. The jurisdiction of this Court under Article 32 of the Constitution has been invoked by two cardiac surgeons. They are attached as Professors to the Department of Cardio Thoracic and Vascular Surgery (CTVS) at the All India Institute of Medical Sciences. Each of them, as indeed the Fourth respondent in relation to whom they raise a dispute, has an enviable record of service in AIIMS. Disputes in service are not a rarity, even among doctors. The distinguished service of the contesting doctors in the present case renders the task of the adjudicator unenviable. That one of them will rank senior is no reflection of the merit of the others. Life is not always equitable in assigning accolades. E F

2. The relief which the petitioners seek is a writ in the nature of mandamus directing the First respondent to determine their seniority in relation to the Fourth respondent in terms of a binding policy of 1997. They seek a direction that since their selection on 12 September 2005 as Additional Professors, they would rank senior to the Fourth respondent. The petitioners challenge the legality of the office memoranda dated 20 April 2010, 14 July 2017 and 24 August 2017 issued by the First respondent. G H

A 3. The first petitioner (Dr A K Bisoi), the second petitioner (Dr U K Chowdhury) and the Fourth respondent (Dr Shiv K Choudhary) were appointed by direct recruitment as Assistant Professors on 4 June 2003. On 1 July 2003, they were promoted as Associate Professors. On 23 September 2005, they were appointed by direct recruitment as Additional Professors. On 1 July 2010, they were promoted as Professors, a position which they now occupy. The seniormost will be designated as Head of Department of CTVS.

B 4. The Attorney General for India has placed on the record a tabular statement, reflecting the comparative position in the merit list and seniority, in each of the positions to which the petitioners and fourth respondent were appointed or, as the case may be, promoted. For convenience of reference, the statement is reproduced below:

D	Names	Direct recruitment as Assistant Professor on 4.6.2003		Promotion as Associate Professor on 1.7.2003	Direct Recruitment as Additional Professor on 23.9.2005		Promotion as Professor on 1.7.2010
		Merit List	Seniority	Seniority	Merit List	Seniority	Seniority
E	Dr Shiv K Choudhary (Respondent No. 4)	First	First	First	First	First	First
F	Dr U K Chowdhury (Petitioner No. 2)	Second	Second	Second	Second	Second	Second
	Dr A K Bisoi (Petitioner No. 1)	Third	Third	Third	Third	Third	Third

G The above statement would indicate that the Fourth respondent has consistently been ranked senior to the petitioners as Assistant Professor, Associate Professor, Additional Professor and Professor. The appointment of all the three surgeons as Additional Professors was on 23 September 2005. For well over twelve years, the Fourth respondent has been placed senior to the Petitioners.

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5. On 25 April 2005, four posts of Additional Professor were advertised in the department of CTVS, which were to be filled up through open selection. The shortlisted candidates were called for interview before a Selection Committee on 12 September 2005. The Selection Committee recorded the minutes of its decision in the following terms:

“ALL INDIA INSTITUTE OF MEDICAL SCIENCES  
 SELECTION COMMITTEE MEETING HELD ON  
 12<sup>th</sup> SEPTEMBER 2005

Considering the performance of candidates and their records, and also the opinion of the technical advisers, the Committee recommends the following candidates for the post of Additional Professor of CTVS in order of merit including the candidates on the waiting list specified separately :-

1. Dr. Shiv Kumar Choudhary
2. Dr Ujjwal Kumar Chowdhury
3. Dr.Akshya Kumar Bisoi

WAITING LIST

1. Three extra increments recommended for each one of the above candidates.”

The Selection Committee consisted of seven persons. Among them were two experts drawn from outside. The grades which were allocated by each of the members of the Selection Committee to the contesting parties in the present case are tabulated below:

**“Grades awarded by the Selection Committee for direct recruitment to the Post of Additional Professor, CTVS on 12.9.2005**

	Member 1	Member 2	Member 3	Member 4	Member 5	Expert/ Adviser 1	Expert/ Adviser 2
Dr Shiv K Choudhary (Respondent No. 4)	A+	A+	A+	A+	A+	A+	A
Dr U K Chowdhury (Petitioner No. 2)	A+	A+	A+	A+	A+	A+	A
Dr.Bisoi (Petitioner No.1)	A+	A+	A+	A+	A+	A+	A+

A The above chart would indicate that all the seven members of the Selection Committee, assigned an A+ grading to the First petitioner. Six members of the Selection Committee assigned an A+ grading to the Second petitioner and the Fourth respondent. One of the two experts who had rated the first petitioner as A+, rated the second petitioner and the Fourth respondent as A. It is on this basis that the petitioners  
B contend that the order of merit which was drawn up was erroneous and that the First petitioner should have been placed at the top of the order of merit instead and in place of the Fourth respondent.

6. According to the petitioners, in 1997, the First respondent  
C decided that in order to make the selection process transparent, it had been resolved that the final selection of candidates would be made on the basis of the grading by the members of the Selection Committee. The petitioners claim that if the policy of 1997 were followed the First petitioner would have ranked higher than the Fourth respondent. Thus, the petitioners claim that the First petitioner should rank senior to the  
D Fourth respondent by virtue of the fact that in the grading given to the rival candidates by the members of the Selection Committee in 2005, he was allotted a higher grade than the Fourth respondent by one of the seven members, the other members having allotted the same grading. The petitioners have sought to buttress this submission by placing reliance on a decision communicated on 14 October 2014 by the Union  
E Ministry of Health and Family Welfare under Section 25 of the All India Institute of Medical Sciences Act 1956 requiring the First respondent to examine the issue of seniority, amongst the three professors in the CTVS department “based on the recommendations of the Standing Selection Committee meeting held on 12 September 2005” and to fix the seniority  
F “strictly” in accordance with the policy decision of 1997.

7. Mr Vikas Singh, learned senior counsel urged that in terms of the policy decision of 1997, it was necessary that the *inter se* seniority of selected members of the faculty should be fixed purely on the basis of merit; merit being determined in terms of the grades awarded by the  
G members of the Selection Committee including the experts. The submission is that the decision which was communicated by the Union government in exercise of powers conferred by Section 25 of the AIIMS Act was binding on the First respondent. Reliance was placed on the provisions of Section 25 which read thus:

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“25. Control by Central Government A

The Institute shall carry out such directions as may be issued to it from time to time by the Central Government for the efficient administration of this Act.”

The petitioners also submit that the grade sheets pertaining to the 2005 selection in the department of CTVS were put up to the Governing Body on 16 January 2012 for scrutiny. The Governing Body observed thus: B

“... The representations were discussed at length and the GB found merit in the claim of Dr. A.K. Bisoi as he was rated best among three Additional Professors recruited to the post under direct recruitment with him in the year 2005....” C

The petitioners have also relied upon a communication of the then Director, Dr R C Deba, to the President of AIIMS on 27 June 2012 *inter alia* stating thus:

“... I am forwarding his submission to the President for his consideration as I believe that he has a claim as per the records produced by him and the available records at AIIMS also suggested him as the senior most among the three Additional Professors selected at that time, if the grades given to him are considered on merit as per Institute Body decision dated 15.01.97.....” D E

The Head of the CTVS Department demitted service on 31 December 2017. The senior most would assume charge as Head of Department.

8. In pursuance of the order of this Court dated 11 December 2017, issuing notice, the learned Attorney General for India has appeared on behalf of the First, Second and Third respondents with Mr R Balasubramaniam. Mr Mukul Rohatgi and Mr P S Patwalia, learned senior counsel have appeared on behalf of the Fourth respondent. A counter affidavit has been filed on behalf of the First, Second and Fourth respondents in these proceedings. Pleadings have been completed with a rejoinder as well. F G

9. A preliminary objection has been raised to the maintainability of the Writ Petition on the ground that the petitioners have an efficacious alternate remedy to raise a dispute of *inter se* seniority before the Central H

- A Administrative Tribunal. Hence, it was urged that a petition under Article 32 of the Constitution should not be entertained. This submission has been countered on behalf of the petitioners by Shri Vikas Singh, learned senior counsel, who adverted to a decision of a Division Bench of the Delhi High Court in **Dr Dilip Kumar Paridav All India Institute of Medical Sciences**<sup>1</sup>. Learned senior counsel urged that the Delhi High Court has held that “the role of the experts co-opted in the selection process is merely advisory” and that the members of the Standing Selection Committee are not bound by the opinion of the experts. In view of this statement of law, the correctness of which has been placed in issue, it has been urged that the remedy of approaching the Tribunal is not efficacious, the Tribunal being bound by the decision of the High Court. Hence, it was urged that it would be appropriate for this Court to consider the position in law and to exercise its jurisdiction under Article 32, especially having regard to the fact that the First respondent is an institution of national importance. It was urged that a dispute in regard to seniority ultimately affects the efficiency of personnel and hence it is necessary for the court to resolve the question.

10. During the course of the hearing, affidavits have been filed on behalf of the First, Second and Fourth respondents traversing the entire dispute on merits. The learned Attorney General as well as the learned Senior Counsel appearing for the contesting doctors have assisted this Court on the merits of the matter. Since the issue has been argued on merits as well, we have in the considered exercise of our judgment determined that it would be appropriate to resolve the matter here rather than relegating the parties to a protracted litigation before the Tribunal and the High Court. We have also borne in mind the submission of the petitioners that in view of the judgment of the Delhi High Court noted above, it would be necessary for this Court to set down the position.

11. While analysing the grievance of the petitioners, a striking aspect of the matter which has emerged before the Court is that the fixation of the order of seniority as between the petitioners and the Fourth respondent, pursuant to their selection as Additional Professors on 23 September 2005 has been examined on several occasions by the Governing Body of the First respondent. They include the following:

- (i) At the 147<sup>th</sup> meeting of the Governing Body on 14 April 2012, it was resolved thus:

H <sup>1</sup>LPA 360 of 2004, decided on 9 January 2012

“The Governing Body considered the representation submitted by Dr A K Bisoi and Dr U K Choudhary. It also considered the judgment of the Delhi High Court of 9<sup>th</sup> February 2012 in the case filed by Dr Dilip Kumar Parida. After examining all aspects including the Institute Body’s Resolution dated 15.1.1997, the advice of the Director, the representation submitted by Dr A K Bisoi and Dr U K Choudhary, the Governing Body decided that *inter seseniority* of Dr Shiv Kumar Choudhary, Dr U K Choudhary and Dr A K Bisoi would be maintained as had been recommended by the Standing Committee in the year 2005.;

(ii) The First petitioner continued to represent his grievance. On 22 October 2012, the Governing Body in its 148<sup>th</sup> meeting resolved that a Committee consisting of (i) The Health Secretary; (ii) Director, AIIMS; and (iii) Dr S P Agrawal would examine the facts/records and place its report before it. Based on the report of the Committee, the Governing Body resolved at its 149<sup>th</sup> meeting held on 19 July 2013 thus:

“It was accordingly decided not to make any changes nor to redefine seniority of the 3 Professors which was decided by then GB on the basis of the recommendations of SSC.”

(iii) On 12 May 2014, the Governing Body revisited the issue at its 151<sup>st</sup> meeting and resolved thus:

“After discussion, the Governing Body reiterated its decision taken in the 149<sup>th</sup> meeting of G.B. held on 19<sup>th</sup> July, 2013. It was unanimously decided that, this matter need not be discussed again,” ;

(iv) Subsequently, the Union Health Minister directed AIIMS administration to once again bring the matter relating to the seniority of the first petitioner before the ensuing meeting of the Governing Body. Following this at the 153<sup>rd</sup> meeting of the General Body which was held on 22 June 2016, the earlier decisions were noted and the following decision was taken:

“The Governing Body considered the issues involved in the seniority among Professors in the Department of CTVS. The Governing Body noted the earlier decisions. It was decided that the matter may be explained through a communication by AIIMS to the Ministry and be placed before HFM cum The President, AIIMS for his consideration.”

A Pursuant to the above decision, a communication was addressed to the Ministry of Health and Family Welfare on 10 October 2016 stating thus:

B “The Standing Selection Committee is the final arbitrator and interpreter of the Institute Body guidelines in the matter of selections. It implements the guidelines within the statutory limitation taking into consideration not only the performance at the time of interview but also overall assessment of the candidates including the curriculum vitae submitted by the candidates in the application form. The Standing Selection Committee, in this case, has placed Prof. (Dr) Shiv Choudhary above Prof. (Dr.) A.K. Bisoi.”

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D 12. The above narration indicates that since April 2012, the consistent position which has been maintained by the First respondent is in line with the order of merit which was recommended by the Selection Committee by which the Fourth respondent was placed above the petitioners when they were selected for appointment as Additional Professors.

E 13. On 14 October 2014, a communication was addressed to the Director of the First respondent by the Union Ministry of Health and Family Welfare, in exercise of its powers under Section 25 of the AIIMS Act, 1956. The directive was in the following terms:

F “3. In view of above, the institute is directed under Section 25 of AIIMS Act 1956 to examine the issue of fixation of seniority amongst the three professors in the Department of CTVS, AIIMS, New Delhi who were appointed as direct recruits to the post of Additional Professors in CTVS, AIIMS, New Delhi based on the recommendations of the Standing Selection Committee meeting held on 12.9.2005 and fix the seniority strictly in accordance with the policy decision of Institute Body in 1997 in correct order.”

G The above directive under Section 25 required the First respondent to examine the issue of seniority amongst the three professors in the department of CTVS. The directive refers to the appointment of the three professors based on the recommendations of the Standing Selection Committee of 12 September 2005. Seniority was required to be determined “strictly” in accordance with the policy decision of the institute of 1997.

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14. In compliance with the directive, the First respondent informed the Union government by a letter dated 18 February 2015 thus: A

“This issue had been placed before the governing body first in its meeting held on 16.1.2012 and as desired by the GB, the issue was again placed before it on 14.4.201. It was decided by the GB that the inter se seniority among Dr S K Choudhary, Dr U K Chowdhury and Dr A K Bisoi would be examined as had been recommended by the Standing Selection Committee in the year 2005. B

Further, the Governing Body in its meeting held on 22.10.2012 while considering action taken report on the recommendation of previous GB meeting took place note of representations of Dr A K Bisoi and decided that a committee consisting of Health Secretary, Director AIIMS and Dr S P Agarwal would examine the facts/records and place their report before the Governing Body. C

Accordingly, the committee under the chairmanship of Sh P K Pradhan, then Secretary, Health examined the issue but express their inability to comment on the recommendations on the Standing Selection Committee, stating that the committee does not have the mandate to review the decision of the Standing Selection Committee as per the guidelines approved by the Institute Body in its meeting held on 18.9.1997. The committee however, observed that the issue of seniority becomes relevant only for becoming Head of the Department and therefore, they have stressed the need to implement the decision of the Governing Body in its meeting held on 16.1.2012 regarding rotation of headship. The issue of rotating headship requires wider consideration. D

The recommendation of the committee under the Health Secretary was placed before the Governing Body in its meeting held on 22.10.2012 where in it was decided neither to make any changes nor to re-define seniority of the three professors which was decided by the G.B. on the basis of recommendation on Standing Selection Committee. E F

In pursuance of the Section 25, of AIIMS Act, 1956 directives to fix *inter se* seniority among Dr S K Choudhary, Dr Ujjwal Kumar Choudhary and Dr A K Bisoi stands decided as per the decision of the Governing Body dated 23.9.2005, 14.4.2012 and 22.10.2012.” G

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A 15. In response to a further query of the Ministry of Health and Family Welfare dated 31 March 2015, the First respondent clarified the matter on 23 September 2015 in the following terms :

B “The recommendations of the Selection Committee were approved by the Governing Body in its meeting held on 23.9.2005 and thereafter these three faculties were appointed as Additional Professor. The seniority of direct recruit faculty is determined in the order of merit in which they are recommended by the Selection Committee. As per the recommendations of the Selection Committee as stated above, Dr S K Choudhary is senior to Dr U K Chowdhury who is senior to Dr A K Bisoi...

C Regarding the other two queries, it is informed that Dr S K Choudhary, Dr U K Chowdhury and Dr A K Bisoi were initially appointed as Assistant Professor at the Institute. All these were promoted as Associate Professor under Assessment Promotion Scheme before they were considered for the position of Additional Professor under direct recruitment quota in 2005. The seniority among these three faculties in the grades of Assistant Professor and Associate Professor were in the same order as in the post of Additional Professor i.e. Dr S K Choudhary is senior to Dr U K Chowdhury who is senior to Dr A K Bisoi.”

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E 16. The Union government had in terms of its directive dated 14 October 2014 required the First respondent to examine the issue of *inter se* seniority in accordance with the policy decision of 1997. The directive did not mandate that the First petitioner rank senior to the Fourth respondent. After due examination of the matter, the Union government was informed that the order of selection recommended by the Selection Committee in 2005 and approved by the General Body was maintained.

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G 17. The Court is confronted in the present case with a situation in which recruitment to the post of Additional Professor was carried out in 2005. That was well over 12 years ago. The petitioners have instituted these proceedings under Article 32 in November 2017 to question the order of ranking made by the Selection Committee on 12 September 2005. There is no cogent explanation for this belated recourse to legal remedies. The petitioners cannot legitimately explain the delay on their part merely by contending that they were representing to the First respondent to remedy their grievances. The petitioners may have believed

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in good faith that the AIIMS administration would pay heed to their A  
grievances. They had a sympathetic ear of the Union Ministry of Health  
and Family Welfare. But twelve years is too long a period, by any means,  
to not seek recourse to judicial remedies. As the narration of facts would  
indicate, the Governing Body had on 14 April 2012 decided to maintain B  
the order of merit in terms of which the Fourth respondent was ranked  
first, above the two petitioners. Even thereafter, a three member  
committee was constituted by the Governing Body in October 2012 and  
a decision was once again taken on 19 July 2013 to maintain the order of  
seniority. This was reiterated on 12 May 2014 and 22 June 2016. The  
petitioners were thus aware of the consistent position which was adopted C  
by the First respondent. The delay on their part in seeking recourse to  
their legal remedies must weigh against them. At this stage it would be  
manifestly unfair to unsettle the *inter se* seniority between the three  
Professors in the CTVS department by reopening the recommendation  
made by the Selection Committee in 2005.

18. In holding that an unexpected delay on the part of the petitioners D  
would disentitle them to relief, we place reliance on a judgment of this  
Court in **State of Uttaranchal v ShivCharan Singh Bhandari**<sup>2</sup>. The  
learned Chief Justice, after adverting to the settled position of law in that  
regard, observed thus:

“27. We are absolutely conscious that in the case at hand the E  
seniority has not been disturbed in the promotional cadre and no  
promotions may be unsettled..the respondents chose to sleep like  
Rip Van Winkle and got up from their slumber at their own leisure,  
for some reason which is fathomable to them only. But such  
fathoming of reasons by oneself is not countenanced in law. Anyone  
who sleeps over his right is bound to suffer.” (Id at page 185) F

“28. Remaining oblivious to the factum of delay and laches and G  
granting relief is contrary to all settled principles and even would  
not remotely attract the concept of discretion. We may hasten to  
add that the same may not be applicable in all circumstances where  
certain categories of fundamental rights are infringed. But, a stale  
claim of getting promotional benefits definitely should not have  
been entertained by the Tribunal and accepted by the High  
Court.”(Id at page 186)

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<sup>2</sup>(2013) 12 SCC 179

A There has to be an element of repose and a stale claim cannot be resuscitated.

19. The issue of making selections “transparent and more participatory” at AIIMS was entrusted to a sub-committee formed for that purpose in 1997. The suggestions of the sub-committee, together  
 B with administrative comments, were placed before a meeting of the Institute body as Agenda Item 5 on 15 January 1997. The agenda note *inter alia* contain the following proposal:

C “In order to make the selections transparent and more participatory, it is proposed that all the members of the Selection Committee as well as the technical experts should be asked to give confidentially gradings/markings of each candidate in the following manner

- 1) A+
- 2) A
- 3) B+
- D 4) B
- 5) C

**The gradings given by all the members of the Selection Committee and technical experts should be placed before the Chairman of the Selection Committee and final selection of the candidate will be made on the basis of gradings/markings given by the members of the Selection Committee and the technical experts as mentioned above. In case, there is a tie in the gradings in respect of any candidate, the final decision for the selection of the candidate, should rest with the Chairman of the Selection Committee after discussion with other members of the Selection Committee.**

F If the above method is applied for making the final selection of the candidates, then there is no need for the technical experts to continue to sit in the Selection till a final decision is made. In this way, the confidentiality of the selected candidate will be maintained.

G The members of the Selection Committee and the technical experts will specifically be asked to give the gradings in respect of each and every candidate as mentioned above. The same procedure should be applied in case of candidates who are appearing under the Assessment Promotion Scheme.”

H **(emphasis supplied)**

The suggestions of the sub-committee and the administrative comments were approved. Subsequently on 15 April 1997, it was found that there was a disparity between the recommendations of the sub-committee and the administrative comments. On 18 September 1997 a modified set of administrative comments was brought before the Institute body. The modified comments *inter alia* stated thus:

“(i)All the members of the Selection Committee as well as the Technical Experts may be asked to give, confidentially, gradings/ markings to each candidate in the following manner :-

- a) A+
- b) A
- c) B+
- d) B
- e) C

**(ii) The gradings given by all the members of the Selection Committee and the Technical Experts, may be placed before the Chairman, Selection Committee and final selection of the candidates may be made on the basis of the gradings/ markings given by the Members of the Selection Committee and the Technical Experts as mentioned above. In case, there is a ‘tie’ in the gradings in respect of any candidate, the final decision for the selection in case of such a candidate may rest with the Chairman of the Selection Committee after discussions with other Members of the Selection Committee.”(emphasis supplied)**

The minutes of 18 September 1997 were approved in a meeting held on 17 June 1998.

20. The above extract indicates that the gradings allocated by the members of the Selection Committee and the technical experts are to be placed before the Chairman of the Selection Committee and the final selection of the candidates “may be made” on the basis of the gradings/ markings of the members of the committee and the technical experts. The expression “may be made” has been approved in place of “will be made” as recorded earlier.

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A 21. The judgment of the Delhi High Court in **Dr Dilip Kumar Paridav AIIMS** (supra) holds that the view of the experts who are co-opted in the selection process is only advisory and that the members of the Standing Selection Committee of AIIMS are not bound by their opinion:

B “21. AIIMS besides being a statutory body is a specialized body and having provided for a constitution of a Standing Selection Committee, we are in agreement with the contentions on behalf of the respondent No. 5 that the role of the experts co-opted in the section process is merely advisory and the members of the Standing Selection Committee are not bound by the opinion of the experts and are entitled to evaluate the applicants for the various posts independently of the same.

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23. We may mention that the experts co-opted in the selection process are intended to evaluate the academic aspects of the candidates while on the other hand the Standing Selection Committee is concerned not only with the academic aspect but also with the other parameters viz. of suitability, demeanour, adaptability etc.”

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The above statement of position in the judgment of the Delhi High Court should not be read to suggest that the experts who are co-opted as part of the Selection Committee have no role and that the other members have to decide on the selection, independently of their views. Experts are co-opted in order to ensure that the Selection Committee is broad-based; that the selection is objective; and that the experience and knowledge of experts drawn from outside provides a valuable input in the ultimate decision. The policy adopted in 1997 indicates that the final selection may be made on the basis of the grading/marking given by the Members of the Selection Committee and the technical experts. Where there is a tie, the decision rests with the Chairperson, after discussion with other members of the Selection Committee. We cannot subscribe to the contention of the petitioners that it is only a tie which can be resolved by the Chairperson and in all other cases, the Committee is obliged to make its selection on a mathematical summation of grades. The fact that selection ‘may be made’ (this expression being in substitution of ‘will be made’) on the basis of the grading given by the members of the Selection Committee and the technical experts suggests that the determination of merit is not merely a mechanical totalling of grades

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allotted. The Selection Committee has to act objectively. This undoubtedly requires giving due credence to the view of the experts. But while doing so, it must have due regard to all relevant aspects bearing on the interest of the institution. The Selection Committee has to assess the credentials of the candidates which would include the service profile of the candidate. It is in this sense that the Delhi High Court has to be construed to mean that while the views of the experts co-opted to the Selection Committee constitute a valuable perspective and input, they cannot be regarded as binding. The members of the Selection Committee would have to consider the views of the experts and to evaluate them together with all other relevant circumstances.

22. In the present case, the record of the court indicates that while making its recommendations for appointment to the post of Additional Professor, the Selection Committee had borne in mind the performance of the candidates, their records as well as the opinion of the technical experts. The minutes of the meeting of 12 September 2005 indicate that the views of the technical experts were considered. To re-evaluate what took place well over twelve years ago would neither be feasible nor appropriate. The policy decision of 1997 indicates that the gradings given by all the members of the Selection Committee and the technical experts are to be placed before the Chairman of the Selection Committee and the final selection “may be made” on the basis of the gradings/markings given by the members of the Selection Committee and the technical experts. The Selection Committee which was constituted in 2005 considered the issue of selection and *inter se* ranking of the selected candidates. In making its final recommendation in regard to their order of merit, upon appointment as Additional Professors, the Selection Committee had due regard to relevant matters including the performance of the candidates, their records and the opinion of the experts. Hence, the ranking which has been assigned cannot be regarded as being in breach of the policy decision of 1997. It would be iniquitous to unsettle the position of seniority, over twelve years after the petitioners and the Fourth respondent were selected as Additional Professors. Even thereafter, when each of them has been promoted as a Professor, it is the Fourth respondent who has been ranked higher than the petitioners.

23. For the above reasons, we have come to the conclusion that the grant of relief would unsettle the *inter se* seniority between the petitioners and the Fourth respondent well over twelve years since the

A recommendation of the Selection Committee for appointment as Additional Professors. This cannot be done. Some expressions of opinion in favour of the First petitioner in the departmental processes may have engendered a sense of hope. But that cannot furnish a legal ground to unsettle something that has held the field for long years. We close the proceedings with the expectation that these distinguished doctors will pursue their avocations at AIIMS without rancour. Our decision on seniority is no reflection upon their distinguished service to a premier national institution.

24. The Writ Petition shall accordingly stand dismissed. There shall be no order as to costs.

Kalpana K. Tripathy

Petition dismissed.