

HIGH COURT OF TRIPURA
AGARTALA

WA 56 OF 2022

Kanhaiya Udairaj Yadav, IRLA No.11215738,
Assistant Commandant (Electrical), D.I.G. Headquarters, B.S.F.,
R.K. Puram, New Delhi-110056.

....**Appellant.**

Vrs.

1. Abinash Nanda, Assistant Commandant (Electrical),
Care of Inspector General, Border Security Force, Frontier Headquarters,
Tripura, P.O. Salbagan, P.S. Capital Complex, Salbagan,
Agartala, Tripura-799012.

2. Union of India, through its Secretary,
Ministry of Home Affairs, North Block,
Central Secretariat, New Delhi-110001.

3. The Director General, Border Security Force,
C.G.O. Complex, Lodhi Road, New Delhi-110003.

4. The Inspector General, Border Security Force,
Frontier Headquarters, Tripura, Salbagan, Agartala,
Tripura-799001.

5. Sri Pradeep Suthar, IRLA No.11217305,
Assistant Commandant (Electrical), SHQ BSF
Ferozpur, Ferozpur Cantonment, Moga Road,
Punjab-152001.

...**Respondents.**

WA 26 OF 2022

1. Union of India, represented by the Secretary,
Ministry of Home Affairs, Government of India,
North Block, Central Secretariat, New Delhi-110001.

2. The Director General, BSF,
C.G.O. Complex, Lodhi Road, New Delhi-110003.

3. Inspector General, Border Security Force,
Frontier Headquarters, Salbagan, Agartala,
Tripura.

....Appellants.

Vrs.

1. Abinash Nanda, son of Sri Ambika Charan Nanda,
Assistant Commandant (Electrical),
C/O Inspector General, Border Security Force, Frontier Headquarters,
P.O. Salbagan, P.S. NCC, Agartala, Tripura-799012.

2. Sri Yadav Kanhaiya Udairaj,
Assistant Commandant (Electrical), D.I.G. Headquarters, B.S.F.,
R.K. Puram, New Delhi-110056.

3. Sri Pradeep Suthar, IRLA No.11217305,
Assistant Commandant (Electrical), SHQ BSF
Ferozpur, Ferozpur Cantonment, Moga Road,
Punjab-152001.

...Respondents.

IN WA NO. 56/2022

For the appellant(s) : Mr. J. Rajesh, Advocate.
Mr. K. K. Pal, Advocate.

For the respondent(s) : Mrs. S. Deb(Gupta), Advocate.
Mr. Biswanath Majumder, CGC.

IN WA NO.26/2022

For the appellant(s) : Mr. Biswanath Majumder, CGC

For the respondent(s) : Mr. J. Rajesh, Advocate.
Mr. K. K. Pal, Advocate.
Mrs. S. Deb (Gupta), Advocate.

Argument heard and
judgment delivered on : 24.01.2023

Whether fit for
reporting : Yes

**HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR.JUSTICE ARINDAM LODH**

JUDGMENT & ORDER(ORAL)

[T.Amarnath Goud, ACJ]

Both the writ appeals are directed against the judgment and order dated 26.04.2021, passed by the learned Single Judge of this court in WP(C) No.13 of 2020 whereby the learned Single Judge had allowed the writ petition. Since the facts and issues are identical, these two appeals are taken up together for hearing and disposal by this common judgment.

2. The writ appeal no.56 of 2022 was filed by the respondent no.4 in the writ petition and the writ appeal no.26 of 2022 was filed by the respondent no.1, the Union of India in the writ petition.

3. The petitioner in the writ petition has sought for the following reliefs:

"It is, therefore, prayed that Your Lordship would graciously be pleased to issue rule upon the Respondents to show cause as to why the respondents should not transmit all records relating to the case of the Petitioner:

- i) *As to a writ in the nature of mandamus directing the Respondents and each of them to prepare the seniority list as per the Border Security Force Rules.*
- ii) *As to a writ in the nature of certiorari quashing the final Inter-Se-Seniority of direct recruits and promotees (AC/Elect., Ac/Works & AC/WW) as per rota-quota system dated 31.12.2019 and the process of DPC for promotion of AC(Elect.) to DC (Elect.) for the transitional vacancy year 2018.*
- iii) *As to a writ in the nature of mandamus directing the Respondents and each of them to modify the seniority list as per guideline of*

the judgment passed by Hon'ble Supreme Court and as well as the office memorandum and as per the tentative seniority/gradation list prior to the tentative seniority list dated 21.01.2019.

- iv) *It is therefore prayed that your Lordship would graciously pleased to consider the above and pleased to pass an interim order staying effect of the final Inter-Se-Seniority list of direct recruits and promotes(AE (Elec.), AC/Works & AC/WW) as per rota-quota staying the process for promotion as per final Inter-Se-Seniority list of direct recruits and promotees (AE(Elec.), AC/Works & AC/WW) as per rota-quota system dated 31.12.2019 till disposal of the writ petition.*

AND

- v) *As to why such other order/orders should not be passed so as to give full relief to the petitioner and upon cause shown to make the Rule absolute."*

4. After hearing both sides, the learned Single Judge allowed the writ petition with the following observations and directions:

*"19. The solitary question that is material for our purpose is that whether an Assistant Commandant who was not borne in the cadre during the vacancy year or in the recruitment year can be made senior to a person who had been substantively appointed in the same vacancy year (2011-2012). This answer has been unequivocally returned in **K. Meghachandra Singh & Others versus Ningam Siro & Others** (supra) in the manner that "under Service Jurisprudence, seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre. In our considered opinion, the law on the issue is correctly declared in J.C. Patnaik (supra) and consequently we disapprove the norms on assessment of inter-se seniority, suggested in N. R. Parmar (supra)."*

*20. There cannot be any amount of dispute that when the petitioner was promoted to the post of Assistant Commandant (Electrical) by virtue of the order dated 30.12.2011, the respondents No.4 and 5 were not born in the cadre. As such, following the principles as laid down in **K. Meghachandra Singh & Others versus Ningam Siro & Others** (supra), the inter-se seniority as declared by the office memorandum dated 31.12.2019 is liable to be interfered with and accordingly it is interfered. The said office memorandum dated 31.12.2019 stands set aside. The*

seniority of the petitioner shall be restored and the name of the petitioner shall be placed above the respondents No.4 and 5 and the person who got promotion after the petitioner. Before the final inter-se seniority list for the post of Assistant Commandant (Electrical) is recast, no promotion be made to the next grade on the basis of the said inter-se seniority list/gradation list of AC (Electrical). The final seniority list in terms of the above direction shall be recast within a period of 3(three) months from today.

This writ petition stands allowed to the extent as indicated above.

There shall be no order as to costs.”

Being aggrieved by and dissatisfied with the impugned judgment and order, the respondent nos. 1 and 4 of the writ petition have preferred the present writ appeals before this court.

5. The case of the appellant in writ appeal no.56 of 2022 [Respondent no.4 in WP(C) No.13 of 2020] is that he being a direct recruitee under the Electrical Wing of Border Security Force would be governed by the Central Government's Act and Rules and the promotees (in-service candidates) including the writ petitioner (respondent no.1 in Writ Appeal No.56 of 2022) are also seeking promotion and claiming seniority above the direct recruitees. In this regard the appellant, has relied upon the office memorandum dated 31.12.2019 and contended that in the absence of any specific rules governing the central government employees in which the appellant's case clearly falls and is supposed to be considered under the office memorandum which are the guidelines for considering the case of the appellant. In this background the learned single judge erred in

considering the case of the writ petitioner in the light of ***K. Meghachandra Singh & Ors Vrs. Ningam Siro & Ors, (2020) 5 SCC 689*** and allowed the writ petition. In so far as the said judgment which was referred by the learned Single Judge is concerned, the matter pertains to the Manipur State Police Services and the said rules do not govern the case of the appellant herein. Further, this judgment had been referred to a larger bench of Supreme Court and further contended that the said judgment is *per incuriam* and accordingly, the appellant prayed to set aside the order of the learned Single Judge and allow the writ appeal.

6. The Union of India, who was the respondent no.1 in the writ petition preferred the writ appeal no. 26/2022 and Mr. Biswanath Majumder, learned CGC appearing for the Union of India has adopted the argument of Mr. J. Rajesh, learned counsel of writ appeal no.56/2022 and also prayed to allow the writ appeal filed by the Union of India. Mrs. S. Deb Gupta, learned counsel appearing for the respondent no. 1 herein, contended that the respondent no.1 is entitled for claiming his seniority over and above the respondent-appellant of WA No.56/2022 and further submitted that the judgment passed by the learned Single Judge is correct and the writ appeals needs to be dismissed.

7. This court after fair consideration of the arguments and the documents and the judgments placed before this court, the issue for

consideration with regard to the *inter se* seniority between direct recruits and promotees both stand on the separate footing and cannot be equated. It is settled principle of law that when there are no governing rules on any aspect, any administrative instructions issued would have standard recourse of law.

8. Mr. J. Rajesh, learned counsel appearing for the appellant in WA No.56/2022 has submitted a written argument. The excerpts of the written submission and written argument read as follows:-

“.... The seniority list of ‘Group A’ Officers in the Electrical Engineering Cadre was finalized by Respondent No.2 on 31.12.2019, based on the principles of inter-se seniority, i.e ‘rota-quota’ as provided for by the DoPT OM dated 04.03.2014. The Seniority list was prepared on the recommendation of the Board of Officers (BOO) to apply the rules provided in the DoPT OM dated 04.03.2014. The O.M. dated 04.03.2014 is binding on the Central Armed Police Forces, such as the Border Security Force, which falls under the Ministry of Home Affairs.[Reference: Impugned Judgment at Pg.374-392, O.M. dated 31.12.2019 at Pg.242-249, O.M. dated 04.03.2014 at Pg.220-222, and Seniority List dated 31.12.2019 at Pg.250-260]

The Seniority List dated 31.12.2019 was implemented by Respondent No. 2 to 4, complying with the directions issued by the Hon’ble High Court of Delhi in W.P.(C) No. 1285 of 2019 titled Santosh Kumar v. Union of India and Others, vide Order dated 07.03.2019 [Reference: Order dated 07.03.2019 at Pg.223-224.]

Permanently, based on the Seniority List dated 31.12.2019, the petitioner in WP(C) No.1285 of 2019, i.e.Santosh Kumar, was promoted to Deputy Commandant (Electrical). [Reference: Santosh Kumar at Srl. No.2 at Pg.252].

It is respectfully submitted that the impugned judgment has incorrectly set aside the O.M. dated 31.12.2019 and interfered with the final Seniority List dated 31.12.2019. Vide the impugned judgment, the Ld. Single Judge inter alia directed the Respondent No.2 to 4 as follows:-

i. Recast the seniority list and place Respondent No.1 above the Petitioner, and {Reference: Impugned Judgment at Pg.391.}

ii. Until the seniority list is recast, no promotions can be made to the rank of Deputy Commandant based on the final Seniority List dated 31.12.2019. {Reference: Impugned Judgment at Pg.392}.

.....

WRITTEN ARGUMENT ON BEHALF OF THE APPELLANT

A. The Office Memorandum dated 04.03.2014 controls the field for determining inter-se seniority between Direct Recruits and Promotees and squarely falls within the exception carved out in Paragraph 40 of the Judgment in K. Meghachandra Singh and Ors. v. Ningam Siro and Ors. (2020) 5 SCC 689.

It is submitted that the O.M. dated 04.03.2014 lays down the fundamental principle of inter-se-seniority of Direct Recruits and promotes in Central Civil Services. The said O.M. operates in the present case regarding the dispute of inter-se seniority and constitutes binding executive instructions promulgated under Article 73 of the Constitution of India, 1950.

The O.M. dated 04.03.2014 states that the relative seniority of direct recruits and promotes shall be determined according to the rotation of vacancies reserved for direct recruitment and promotion, respectively, in the Recruitment Rules. The O.M. lays down that the date from which the seniority would be calculated would be; (a) In the case direct recruits; the initiation of the recruitment process in vacancy year, which would also be the date of sending of requisition for filling up of vacancies to the recruiting agency; and (b) In the case of promotees, the date on which a proposal, complete

in all respect, is sent to Chairman-DPC for convening of DPC to fill up the vacancies through promotion.

It is pertinent to mention that keeping in view the judgment of the Hon'ble Supreme Court in K. Meghachandra (supra) dated 19.11.2019, Respondent No.2, Ministry of Home Affairs has published the O.M. dated 13.08.2021 whereby the application of the O.M. dated 04.03.2014 has been saved in the following circumstances as set out in paragraph 7 of the O.M. dated 13.08.2021, to ensure that there is equal and non-arbitrary treatment:

i. Where the inter se seniority of direct recruits and promotees has already been decided in terms of the O.M. dated 04.03.2014,

ii. Where the inter-se seniority could not be finalized by 18.11.2019, i.e. the date of the Judgment in K. Meghachandra (supra),

iii. In all cases of inter-se seniority where the administrative Department/Cadre Authority has initiated the recruitment process before 19.11.2019.

Therefore, it is submitted that the Ld. Single Judge could not have applied the Judgment of K. Mechachandra(supra) without considering that the O.M. dated 04.03.2014 are binding executive instruction and rules that control the field to determine inter-se seniority between direct receuits and promotees.

However, the Judgment of K. Meghachandra (supra) refers to the O.M. dated 04.03.2014, although it does not set aside the same. Neither has Respondent No.1 challenged the O.M. dated 04.03.2014, nor has Respondent No.1 denied that the O.M. applies to stakeholders before this Hon'ble Court. The impugned Judgment does not decide the question as to whether the O.M. dated 04.03.2014 controls the principles for inter-se seniority between direct recruits and promotees.

The Impugned Judgment bypassed the O.M. dated 04.03.2014 and incorrectly applied the Judgment of K. Meghachandra (supra). It is pertinent to state that the Judgment itself in Paraghaph 40 carves out the exception for the application of the Judgment, even though it provides that it only applies prospectively and not retrospectively.

It is respectfully submitted that the Petitioner and the stakeholders before this Hon'ble Court squarely fall within the exceptions caved out by the Judgment for the following reasons:

i. Firstly, the Judgment was rendered in the specific context of Manipur Police Services, a service of the State Government, unlike Respondent No.1 to 3, which is a service of the Central Government. For this reason, the Judgment in paragraphs 36 and 37; resists the reliance on O.M. dated 04.03.2014 and escapes its folds based on the reasoning that the same does not apply to the Manipur Police Services.

ii. Secondly, in paragraph 37, the Judgment concedes that the O.M. dated 01.01.2018, promulgated by the State Government, which adopts the O.M. dated 04.03.2014 passed by the Central Government, will remain applicable and in force prospectively from 01.01.2018. Therefore, it is clear that the Hon'ble Supreme Court did not intend to disturb the applicability of the O.M. 04.03.2014.

iii. Thirdly, the Judgment at paragraph 40 provides two exceptions for its applicability and applicability of the rota-quota principle. The relevant excerpt to the Judgment is as follows:-

"40. The Judgment in N. R. Parmar (Supra) relating to the Central Government employees cannot in our opinion, automatically apply to the Manipur State Police Officers, governed by the MPS Rules, 1965. We also feel that N.R. Parmar (Supra) had incorrectly distinguished the long-standing seniority determination principles propounded in, inter-alia, J.C. Patnaik (Supra), Suraj Prakash Gupta & Ors. vs. State of J&K & Ors. 5 and Pawan Pratap Singh & Ors. Vs. Reevan Singh & Ors.(Supra). These three judgments and several others with like enunciation on the law for determination of seniority makes it abundantly clear that under Service Jurisprudence, seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre. In our considered opinion, the law on the issue is correctly declared in J.C. Patnaik (Supra) and consequently we disapprove the norms on assessment of inter-se seniority, suggested in N. R. Parmar (Supra). Accordingly, the decision

in N.R. Parmar is overruled. However, it is made clear that this decision will not affect the inter-se seniority already based on N.R. Parmar and the same is protected. This decision will apply prospectively except where seniority is to be fixed under the relevant Rules from the date of vacancy/the date of advertisement.

(Emphasis Supplied)

iv. Therefore, it is clear that in the present case, as the inter-se seniority has is based on the relevant rule, i.e., the O.M. dated 04.03.2014, the same will remain protected, i.e. that the seniority will be determined from the date of vacancy/date of advertisement as stated in the O.M. dated 04.03.3014, and not from the date of appointment.

In *Union of India v. Somasundaram Viswanath*, (1989) 1 SCC 175, the Hon'ble Supreme Court of India held as follows:-

“6. It is well-settled that the norms regarding recruitment and promotion of officers belonging to the Civil Services can be laid down either by a law made by the appropriate Legislature or by rules made under the proviso to Article 309 of the Constitution of India or by means of executive instructions issued under Article 73 of the Constitution of India in the case of Civil Services under the Union of India and under Article 162 of the Constitution of India in the case of Civil Services under the State Governments. If there is a conflict between the executive instructions and the rules made under the proviso to Article 309 of the Constitution of India, the rules made under proviso to Article 309 of the Constitution of India prevail, and if there is conflict between the rules made under the proviso to Article 309 of the Constitution of India and the law made by the appropriate Legislature the law made by the appropriate Legislature prevails. The question for consideration is whether in the instant case there is any conflict between the Rules and the Office Memorandum dated 30.12.1976, referred to above. We have already noticed that there are different rules framed under the proviso to Article 309 of the Constitution of India for making recruitments to services in

the different departments and provisions have been made in them for the constitution of Departmental Promotion Committees for purposes of making recommendations with regard to promotions of officers from a lower cadre to a higher cadre. But these rules are to some extent skeletal in character. No provision has been made in any of them with regard to the procedure to be followed by the Departmental Promotion Committees and their various functions and also to the quorum of the Departmental Promotion Committees. The Office Memorandum dated 30.12.1976, therefore, is in the nature of a complete code with regard to the topics dealt with by it, unless there is anything in the Rules made under the proviso to article 309 of the Constitution of India, which is repugnant to the instructions contained in the Office Memorandum, the Office Memorandum which is apparently issued under article 73 of the Constitution of India is entitled to be treated as valid and binding on all concerned. In the instant case the Rules do not contain any of these details except indicating who are all the persons who constitute the Departmental Promotion Committee. **We do not, therefore, find any repugnance between the Rules and the Office Memorandum.....**

(Emphasis Supplied)

It is respectfully submitted that Respondent No.2, while deciding the representation of Respondent No.1 vide the O.M. dated 31.12.2019, has categorically held that there is no rule under the BSF (Engineering Officers) Recruitment Rules, 2000 and the BSF (Engineering Officers) Recruitment Rules, 2012 regarding the fixation of inter-se seniority. Therefore, no provision conflicts with the O.M. dated 04.03.2014, a complete code governing the norms for fixation of inter-se seniority. As a result, the O.M. dated 04.03.2014 is binding on the Electrical Engineering Cadre of the BSF.

For the reason stated above, Respondent No.2 issued the O.M. dated 13.08.2021, which effectively resolved the controversy regarding the applicability of the O.M. dated 04.03.2014 vis-a-vis the Judgment of K. Meghachandra (supra). Pertinently, what has been laid down in the O.M. dated

13.08.2021 at Paragraph 7 is only an exposition of Paragraph 40 of the Judgment of K. Meghachandra (*supra*).

The Petitioner has been placed at Serial No.5 in the seniority list dated 31.12.2019. The decision to retain this formulation of seniority was taken despite the objections/representations of Promotee officers such as Respondent No.1. Further, based on this formulation, officers from Serial No.1 to Serial No.3 of the Seniority List dated 31.12.2019 have already been promoted to the next rank of Deputy Commandant (Electrical). Therefore, the Impugned Judgment effectively creates two norms after the implementation of the Seniority List dated 31.12.2019.

The decision of Respondent No.1 to Respondent No.3 vide O.M. dated 31.12.2019 is consistent with the object sought to be achieved by the Judgment in K. Meghachandra (*supra*) as the Judgment itself is based on the reasoning that the judgments/common law governing the inter-se seniority must necessarily yield to the relevant rules that provide for the manner seniority such as the O.M. dated 04.03.2014. Hence, the reliance on K. Meghachandra (*supra*) in the Impugned Judgment is wholly incorrect in the context of the stakeholders before this Hon'ble Court.

It is respectfully submitted that the Impugned Judgment has the effect of unsettling the seniority list dated 31.12.2019 and will have far reaching consequences which will directly and indirectly affect many officers who are not before this Hon'ble Court. It is settled that once the seniority list has been finalized, the same must not be unsettled. This principle has gained acceptance by various precedents and is applicable more so, in cases where promotions have already been given effect, based on the seniority list.

For the reasons stated above, it is respectfully submitted that the Impugned Judgment must be set aside, and the decision taken by Respondent No.2 to Respondent No.4 while issuing the O.M. dated 31.12.2019 and the final seniority list dated 31.12.2019 must be upheld.

B. The Judgment of Rohitash Kumar and Ors. V. Om Prakash Sharma, (2013) 11 SCC 451 is only applicable to the

General Duty Cadre and not the special cadres i.e., Electrical Engineering cadre of the BSF.

That the Petitioner's reliance on the Judgment of Rohitash Kumar v. Omprakash, (2013) 11 SCC 451 is wholly misplaced as this judgement is not applicable only to General Duty ('G.D.') Officers and not to Officers in the Electrical Engineering Cadre. The Officers of the Electrical Engineering Cadre are governed by the cadre specific rules, i.e., BSF (Engineering Officers) Recruitment Rules, 2000 and the BSF (Engineering Officers) Recruitment Rules, 2012.

That Respondent No.2 and Respondent No.3 have themselves made this correction earlier on 01.08.2017 while clarifying that Rohitash Kumar (Supra) is not applicable to the Officers who are the stakeholders before this Hon'ble Court. Further, it is respectfully submitted that unlike the G.D. officers, where the basic training of Promotees and Direct Entry Officers is conducted together, the Electrical Engineering Officers do not undergo the training with the Promotees.

The G.D. officers recruited through both the Direct Entry mode and through promotions are appointed on the same date, i.e. after the completion of their training which takes place together, and for which they are given marks which affects their overall seniority. However, the selection for the officers of the Electrical Engineering Cadre is based on the marks obtained in the written test.

Therefore, the Impugned Judgment incorrectly applied the principle of law in Rohitash Kumar (supra) despite the fact that the selection of the Electrical Engineering officers. In case the Direct Entry Officer are ranked based on the date of joining, it would completely frustrate the objective of "Selection by Merit".

It is submitted that the Impugned Judgment erred while holding that the Judgment of Rohitash Kumar (supra) and the rules applicable to the G.D. officer could apply to Electrical Engineering Officers of the BSF. Therefore, as a consequence, there can be no doubt regarding the applicability of the O.M. dated 04.03.2014 to the Appellant.

In view of the submissions made above, it is humbly prayed before this Hon'ble Court to set aside the Impugned Order."

9. Mr. Biswanath Majumder, learned CGC for the Union of India, the appellant in WA No. 26/2022 and the respondent nos. 1, 2 and 3 in WA No.56/2022 contended that as per the directions of the Delhi High Court and the Kerala High Court, the tentative seniority list that was published on 21.01.2019 was sent for consideration of Ministry of Home Affairs and accordingly, the said tentative seniority list after being approved by the Ministry of Home Affairs, the final inter se seniority list dated 31.12.2019 was published. It is further contended by Mr. Majumder, learned CGC that the Border Security Force (Seniority, Promotion and Superannuation of Officers) Rules, 1978 has been superseded by the Border Security Force (General Duty Officers) Recruitment Rules, 2001 published vide GSR-351 dated 28.06.2001. Again, Mr. Majumder, learned CGC reiterated that the rotation of quota has been applied only on available direct recruits and promotees who were appointed against the same vacancy year as per DoP & T OM dated 04.03.2014 and even the decision in K. Meghachandra (supra) overruling the judgment dated 27.11.2012 in ***Union of India & Ors. Vrs. N. R. Parmar, (2012) 13 SCC 340***, the matter has been referred to the Ministry of Home Affairs, Government of India on 05.03.2020. Mr. Majumder, learned CGC has strongly pressed on the DoP & T OM dated 04.03.2014 urging that by that OM, the inter se seniority of

the direct recruits and promotees who were appointed and promoted in the vacancy year 2011-12, has been determined.

10. In the light of above submissions of Mr. Majumder, learned CGC, we may go through the OM dated 04.03.2014, issued by the DoP & T vide Memorandum No.20011/1/2012/Estt.(D), in pursuance of the judgment passed by the Hon'ble Supreme Court in the case of **N.R Parmar** (*supra*) in consultation with the Department of Legal Affairs, Govt. of India. The relevant part of the said memorandum is reproduced here-in-below:

“b) The rotation of quota based on the available direct recruits and promotees appointed against the vacancies of a Recruitment Year, as provided in DOPT O.M. dated 7.2.1986/3.07.1986, would continue to operate for determination of inter se seniority between direct recruits and promotees;

“c) The available direct recruits and promotees, for assignment of inter se seniority, would refer to the direct recruits and promotees, who are appointed against the vacancies of a Recruitment Year;

d) Recruitment Year would be the year of initiating the recruitment process against a vacancy year;

e) Initiation of recruitment process against a vacancy year would be the date of sending of requisition for filling up of vacancies to the recruiting agency in the case of direct recruits; in the case of promotees the date on which a proposal, complete in all respects, is sent to UPSC/Chairman-DPC for convening of DPC to fill up the vacancies through promotion would be the relevant date.

f) The initiation of recruitment process for any of the modes viz. direct recruitment or promotion would be deemed to be the initiation of recruitment process for the other mode as well;

g) Carry forward of vacancies against direct recruitment or promotion quota would be determined from the

appointments made against the first attempt for filling up of the vacancies for a Recruitment Year;

h) The above principles for determination of inter se seniority of direct recruits and promotees would be effective from 27.11.2012 the date of Supreme Court Judgment in Civil Appeal No.7514-7515/2005 in the case of N.R. Parmar Vs. UOI & Ors.

i) The cases of seniority already settled with reference to the applicable interpretation of the term availability, as contained in DoPT O.M. dated 7.2.86/3.7.86 may not be reopened.”

11. So, it is apparent from the OM dated 04.03.2014 that the *inter se* seniority list of direct recruits and promotees in the Electrical Engineering Cadre was finalized by the Director General, BSF (respondent no.2 in the writ petition) on 31.12.2019 based on the principles of ‘rota-quota’ system and even the said seniority list was prepared as per recommendation of Board of Officers applying the rules provided in the DoP & T OM dated 04.03.2014. Further, it is gathered from the record that based on this formulation, officers from Serial No.1 to Serial No.3 of the Seniority List dated 31.12.2019 have already been promoted to the next rank of Deputy Commandant (Electrical). So, the impugned judgment has the impact of unsettling the seniority list dated 31.12.2019 and will have mass consequences of direct and indirect affect to many of the officers who are not before this court. So, the O.M. dated 04.03.2014 is binding on the Central Armed Police Forces, such as the Border Security Force, which falls under the Ministry of Home Affairs.

12. In view of the above, this court finds that the judgment and order dated 26.04.2021, passed by the learned Single Judge in WP(C) No.13 of 2020, needs to be interfered and accordingly, the same is set aside and quashed. The writ appeals are allowed. The inter se seniority list published vide office memorandum dated 31.12.2019, by the Director General of Police, the respondent no.2 in the impugned writ petition, shall hold good.

13. Both the writ appeals are, accordingly, disposed of. Pending application, if any, also stands disposed of.

JUDGE

CHIEF JUSTICE (ACTING)



सत्यमेव जयते