

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10669 of 2016

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1. Prabhat Ranjan Singh, son of Late Rajeshwar Singh, resident of 292 A, Haritima Path, Railway Officer colony, Sonpur, District-Saran, presently holding the post of General Secretary, East Central Railway Promotee Officers Association, East Central Railway at Hajipur.

.... Petitioner/Applicant in MA/050/00053/2016

2. Girish Kumar, son of Suchendra Prasad Mahto, Senior Signal and Telecommunication Engineer (Works and Design), East Central Railway, Hajipur, resident of Maa Vindhavasini Bhawan, Backside of Sonali Petrol Pump, M.G. Setu Road, Kumhrar, Patna.

.... Petitioners

Versus

1. R. K. Kushwaha, son of Sri Raj Kishore Kushwaha, Assistant Signal and Telecom Engineer, East Central Railway, Danapur, residing at 899/D, Officer's Rest House, Near DRM Office, Khagaul, District-Patna, PIN 801 105.

.... Respondent 1st Set/Applicant in OA

2. The Union of India through the Chairman, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
3. The Secretary, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
4. The Director (Estt.), Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
5. The Under Secretary, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.

.... Respondents

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Appearance :

For the Petitioners	:	Mr. Jitendra Singh, Senior Advocate Mr. Piyush Lall, Advocate Mr. Mritunjay Kumar, Advocate
For the Railways	:	Mr. D.K.Sinha, Senior Advocate Mr. Bijoy Kumar Sinha, Advocate
For the Pvt. Respondents :		Mr. P.N.Sahi, Senior Advocate Mr. M.P.Dixit, Advocate Mr. Sanjay Kumar Choubey, Advocate Mr. Sanjay Kumar Dixit, Advocate Mr. Shailendra Kumar, Advocate Mr. Sunil Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: -05-2017

Private respondent No. 1 was the applicant before the



Central Administrative Tribunal, Patna Bench, Patna (for short 'CAT'). He filed O.A. No. 050/00460 of 2015. After hearing the parties, the CAT allowed the O.A. application, quashed two impugned orders dated 09/12.06.2015, which was Annexure-A/8, and 12.12.2014, which was Annexure-A/4 to the O.A. application and directed recasting of the inter-se seniority in light of the judgment and decision of the Hon'ble Apex Court rendered in *Union of India (UOI) and Ors. etc. etc. Vs. N.R. Parmar and Ors. etc. etc.* reported in (2012) 13 SCC 340. Since these petitioners are now directly affected by the decision of CAT, dated 03.05.2016, the writ application has been filed.

2. The private respondent No.1 filed the O.A. seeking following reliefs :

“8.1 That your Lordships may graciously be pleased to quash and set aside the impugned orders dated 09/12.06.2015 passed by the Respondent No.1 together with order dated 12.12.2014 passed by the respondent No.4 as contained in Annexure-A/8 and A/4 respectively which are contrary to the order passed by Hon'ble Supreme Court of India in N.R. Parmar case and DOP&T's O.M. dated 04.03.2014 as referred to above.

8.2 That your Lordships may further be pleased to direct the respondents to recast the seniority list afresh on the basis of principle laid down by Hon'ble Supreme Court of India in N.R. Parmar case and DOP&T's O.M. dated 04.03.2014



as referred to above without any further delay.

8.3 That the Respondents further be directed to issue corrigendum/amendment/correction slip in Indian Railway Establishment Manual Volume-1, henceforth in view of new Guidelines/directives of DOP&T OM dated 04.03.2014 as contained in Annexure-A/11 which is based on the principle/law laid down by the Hon'ble Supreme Court of India in N.R.Parmar case regarding fixation of inter-se seniority between Direct Recruits and promotees Officers.

8.4. That the respondents further be directed to grant all consequential benefits in favour of the applicant including promotion in JA Grade on the basis of his seniority as per the principle laid down by Hon'ble Supreme Court of India in N.R. Parmar case and DOP&T's O.M. dated 04.03.2014 as referred to above."

3. The factual background, which led to the present litigation, is that a requisition was sent by the Railway Board dated 23.10.2007 to the Union Public Service Commission (UPSC for short). As a consequence thereof, the private respondent came to be appointed on a Group-A service of Indian Railway Service of Signal Engineers on 01.12.2009 through Engineering Service Examination – 2008. While the private respondent was working as a Group-A officer of the Signal Engineering Service, vide order dated 12.08.2014 a panel for the year 2012-13 and 2013-14 with effect from 08.05.2014 was drawn-up. The promotee officers were given



benefit of seniority with effect from 08.05.2009, whereas the private respondent despite being a direct recruit, was not given the benefit of seniority w.e.f. 23.10.2007, i.e. the date of requisition for filling up the vacancies of Group-A service despite the decision of the Hon'ble Apex Court rendered in the case of *N.R. Parmar* (supra).

4. After the decision of the Apex Court in *N.R. Parmar's* case (supra), the DOP&T, Government of India, issued a OM dated 04.03.2014 for fixation of seniority of direct recruits vis-à-vis promotees. The private respondent vide order dated 12.12.2014 was placed below the promotees for the panel year 2012-13 and 2013-14, which the private respondent made a grievance of that such a decision was totally illegal, arbitrary, unconstitutional and in teeth of *N.R. Parmar's* case (supra) as well as the DOP&T OM dated 04.03.2014, which clearly stipulated that the date of sending requisition for filling-up vacancies to the recruiting agency, i.e. the UPSC, in relation to direct recruits will be the date for fixing their seniority and not the date of joining. Since, in the present case, the requisition was sent to the UPSC on 23.10.2007, hence, the relevant date for fixing seniority for the private respondent should have been 23.10.2007, whereas the respondent Railway authorities issued the order dated 12.12.2014 (Annexure-A/4 to O.A.) on the basis of his date of joining, which was 14.12.2009.



5. The direct appointees coming to know of such decision sent representations individually as well as through their Association for re-determination of seniority in conformity with judicial pronouncement. When nothing came to be done, an O.A. No. 260 of 2015 was filed, which was disposed of on 01.04.2015 with a direction upon the respondent authorities of the Railway, especially the Chairman, Railway Board, to treat the O.A. as a representation and pass a speaking, reasoned order within a month.

6. The representation of the private respondent was rejected vide letter dated 12.06.2015, which was Annexure-A/8 to the O.A. The rejection order gave the reason that *N.R. Parmar's* case (supra) or the OM dated 04.03.2014 was not applicable to the Railway since they have their own recruitment and seniority rules applicable to Group-A Railway service. The rejection order also quoted part of an earlier DOP&T OM dated 12.12.1959, which, according to the private respondent, had no applicability but was quoted out of context. It was the stand of the private respondent before the CAT that even though the speaking order had accepted that the DOP&T OM dated 04.03.2014 is based on earlier OM dated 22.12.1959, but there was no reference as to deviation from such principles of DOP&T, which laid down that in case any Ministry or Department wanted to follow a different principle with regard to



grant of seniority etc. they had an obligation to consult the UPSC/DOP&T, which was not done in the present case.

7. Even for the sake of argument, if the Railway rules with regard to seniority was contrary to the judgment passed by the Apex Court in *N.R. Parmar's* case (supra), which is the law of the land as well as DOP&T OM dated 04.03.2014, they had to revert to the UPSC or seek clarification from DOP&T before issuing the promotion orders and altering the seniority of the direct recruits.

8. The respondents before the CAT, i.e. Railway, took a plea that it was not for the Tribunals to issue directions and advisories with respect to the areas and spheres which is within the domain of the executive since the order under challenge in the O.A. that was Annexure-A/4 and Annexure-A/8, was in accordance with Rule 334(2)(ii) of the Indian Railway Establishment Manual (in short 'IREM') Vol.-I framed by the competent authority after taking into consideration the material facts. There was no occasion for the Tribunal to interfere with the decision of the Railway. It was also their stand that as per Rule 330 of the Indian Railway Establishment Manual Vol.-I, Officers appointed to Indian Railway service Group-A, on the basis of examination held by the UPSC with effect from 1986 examination batch, shall count their service for seniority from the date they commenced earning increments in the regular scale as



Junior Scale Officers in Group-A. It was also the stand of the respondent Railway authorities that since they had their own set of rules for fixation of seniority with regard to promotion of direct recruits and since the *N.R. Parmar's* case (supra) was in context of Income Tax Department, the same will have no applicability. Therefore, the seniority of the private respondent was rightly fixed under the promotees and O.A. was fit to be dismissed.

9. The stand of the Railway was seriously contested by the private respondent that the DOP&T OM dated 04.03.2014 was universally followed by all Departments of the Central Government, Railway should have either amended their rules or fallen in line and applied the OM dated 04.03.2014 if not the ratio of the decision of *N.R. Parmar's* case (supra).

10. Since the CAT Bench by and large crystallized the arguments in following terms, they are reproduced hereinbelow for ready reference :

“5. We have heard both the parties. The main dispute In this case is whether the principle laid down in N. R. Parmar's case [supra] followed by the DOPT circular dated 04.03.2014, is applicable in the case of Railway employees or not and, if applicable, whether Rules contrary to that can prevail or not. We have perused the impugned order dated 09.06.2015 wherein the respondents have stated as follows:-

"1. I find that the DOP&T's OM No. 9/11/55-RP dated 22.12.1959 is the base instruction on fixation of inter-se seniority of direct recruits and



promotees. Subsequent instructions of DOP&T including that of 04.03.2014, issued in pursuance of N.R. Parmar are clarificatory instructions, supplementing the base instructions of 22.12.1959. The DOP&T's OM dated 22.12.1959 categorically states that "These principles shall apply for the determination to Inter-se seniority in Central Civil Services and Civil post except such posts and services for which separate principles have already been issued or may be issued hereafter by the Government."

There are clear and specific instructions in IREM Vol.1, on the Inter-se-seniority of direct recruit Junior Scale Group-A officers of the eight organized Railway services including IRSSE, to which the applicant belongs. Their seniority is fixed in terms of provisions contained in- IREM [Vol.1] which has the approval of the President under Article 309 of Indian Constitution.

As per the Rule 328 of the IREM-I, the seniority of officers appointed to various Indian Railway Services in Gr. A Junior Time Scale shall be determined on the basis of Date of Increment in time scale [DITS], which is the date of joining service for direct recruits and is arrived at for Promotees after their induction in Gr. A by giving weightage in seniority. As per Rule 336 pf the IREM-1, officers permanently appointed to Group 'A' Junior Scale [Promotees] against the quota of vacancies reserved for them shall be placed below or above a particular batch of direct recruits accordingly as their DITS are earlier or later than the earliest date on which any one of the direct recruits in a particular batch joins service.

2. The contention of the applicant and figures of the Promotees officers inducted against the relevant year 2001 to 2007 are incorrect. Only 22, 8, 12, 12, 24, 26 and 45 promotees officers, respectively, have been inducted against the promotion quota vacancies for the year 2001 to 2007, after dividing the available vacancies of the Junior Scale in the ratio of 50:50 between the direct recruits and promotees. The indent for direct recruit during the relevant year was curtailed by 2/3rd in terms of Governments instructions to optimize direct recruitment to 1/3rd of the direct recruitment vacancies for five years from the vacancy year 2001-02, which was subsequently extended till 2009. While there was restriction on recruitment from open market against the Direct Recruit Quota there was no corresponding restrictions on induction of Promotees to the Group 'A' Junior Scale against the corresponding promote quota vacancies.

3. The contentions made that the DPC for two vacancy year 2012-13 and 2013-14, of the



Promotees was held together in violation of the guidelines of DOP&T is, not correct. The two panels were finalized strictly in terms of Government instructions and guidelines laid down by DOP&T in terms of para 6.4.1 of Department of Personnel and Public Grievances OM dated 10.04.1989.

In view of above, it is my considered view that the applicant is governed by recruitment/seniority rules applicable to Group A Railway Services laid down in IREM Vol.1 and his seniority, as well as the seniority of promote officers of 2012-13 and 2013-14 has been fixed strictly in terms of these Rules. Therefore, the order dated 12.12.2014, which has been issued in terms of these laid down Rules, stands good."

6. However, from perusal of the DOP&T circular dated 22.12.1959, it transpires that the said circular stipulates general principles for determination of seniority in government service, wherein it is specifically observed as under:-

"[I] These principles shall apply to the determination of seniority in Central Civil Services and Civil posts except such services and posts for which separate principles have already been issued or may be issued hereafter by Government. Ministries or Departments which have made separate rules or issued instructions on the basis of instructions contained in the Ministry of Home Affairs, OM No. 30/44/48-Apptts. Dated the 22nd June, 1949, are requested to consider modification of these rules or instructions on the basis of these general principles. However, whenever, it is considered necessary to follow principles different from those laid down in this Memorandum, a specific reference should be made to the Ministry of Home Affairs will consult the UPSC. As regards individual cases, the Ministry of Home Affairs will decide the cases on which the advice of the Commission should be obtained."

7. The said principle/OM dated 22.12.1959 was followed from time to time and ultimately vide OM dated 04.03.2014, it has been stipulated as under :-

"5[e] Initiation of recruitment process against a vacancy year would be the date of sending of requisition of 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."

This OM was issued to all Ministries/Departments of Govt. of India. Therefore, though the Respondent Railways have their own sets of rules but as the Railway is one of the Ministries of Central Government, they should follow the general principle laid down by DoP&T or to make specific reference to them. Moreover, the principles of determination/fixation of seniority has been settled down by the Apex Court in the case of N.R. Parmar[supra], which has to be followed by each and every ministry as per the DOP&T. Even if we accept that the Railways have other reasons to deviate from the general principles laid down by the DoP&T, in that case also it was the duty on the part of the Railways to refer the same for concurrence of the DOP&T and UPSC and to take their advice as per the OM dated 22.12.1959, which has not been done admittedly by the Railways as it transpires from the communication received under RTI from the UPSC as well as Railways own speaking orders.

8. The prayer of the applicant in the present case is based on the foundation of the principles laid down in the N.R. Parmar case. Thus, it is important to examine the context and the judgment of the N. R. Parmar case. The brief fact in N.R. Parmar case is that in the policy laid down in the circular dated 22.12.1959 referred to above for determining inter-se seniority between direct recruits and promotees, it was later found that there was a serious anomaly in that if some vacancy meant for Direct Recruits in a particular year remained unfilled, that vacancy was still counted in that year and even if Direct Recruits became available in subsequent years, they were treated against unfilled vacancy of the earlier year giving them unintended seniority over promotees/who might have been already working for a number of years. This was addressed by modifying the policy



by DOPT OM dated 07.02.1986 (which provided that unfilled vacancies of Direct Recruits would be carried forward to the next year. The second ambiguity, which was addressed by the modification in 1986 was regarding uncertainty in the completion of the process of the selection from the two streams. In order to remove any arbitrariness or any unintended advantage or disadvantage to any stream because of procedural delays, it was provided that the vacancy year will be the relevant criteria for consideration. Once the process for DR was initiated in the vacancy year, no matter when the candidates became available, they will be counted against that vacancy year and rotation in the ratio of quota would be applicable with reference to the vacancy year. The policy also gave detailed illustration of slotting P1 [i.e. promotees], D1[DRs], P2, D2, etc. The 1959 policy as modified by 7.2. 1986 OM was consolidated into one circular dated 03.07.1996.

9. Thereafter, it so happened that a 'clarificatory' circular was issued on 03.03.2008, which created confusion. It was observed that this 'Clarification' nullified the main policy of 1959 as amended in 1986. In that context, the Hon'ble Supreme Court ruled in N. R. Parmar that a circular which is meant to 'clarify' a provision cannot abrogate or nullify the main instrument. Therefore, the circular dated 03.03.2008 was held to be non est to the extent that the same was in derogation of earlier OMs dated 07.02.1986 and 03.07.1986.

10. Thus, it is important to understand that N. R. Parmar affirms a policy made by the government intended to remove arbitrariness on account of the date, when completion of the process of either direct recruitment or promotion takes place. The reference to the year of requisition is always with reference to the vacancy year. This would be clear from para 22 of the Parmar's judgment, in which their Lordships have quoted the DOPT's O.N. dated



20.12.1999 as follows :

"It is not necessary that the DR for 1987 vacancy should join in 1987 itself. It would suffice if action has been initiated for 1987 DR vacancies in 1987 itself. This is because, in a case of direct recruitment, if the administrative action in filing up the post by DR takes more than a year or so, the individual cannot be held responsible for such administrative delay and hence it would not be appropriate to deprive him of his due seniority for delay on the part of administration in completing this selection by Direct Recruitment."

11. Their Lordships have later analysed and summarized their own reasoning in which in sub-para [b] of the same para, they have observed "it would suffice if action has been initiated for DR vacancies within the recruitment year in which the vacancies had become available."

12. Finally, the Parmar's judgment led to DOPT OM dated 04.03.2014, in which the concluding para 7 is as follows :-

"7. As the conferment of seniority would be against the Recruitment Year in which the recruitment process is initiated for filling up of the vacancies, it is incumbent upon all administrative authorities to ensure that the recruitment process is initiated during the vacancy year itself. While requisition for filling up the vacancies for direct recruitment should be sent to the recruiting agency, complete in all respects, during the vacancy year itself, the timelines specified in the Model Calendar for DPCs contained in DoPT O.M. No. 22011/9/98-Estt[E] dated 08.09.1998 and the Consolidate Instructions on DPCs contained in O.M. No. 22011/5/86- Estt[E] dated April 10, 1989 should be scrupulously adhered to, for filling up the vacancies against promotion quota."

13. Thus, the issue of initiating the process [i.e. sending the requisition to recruiting agency] always envisages initiation in the vacancy year itself. It is quite possible for an organization to initiate action a year prior to the vacancy year in case of direct recruitment knowing yhat the process takes at least a year. That would not confer the direct recruitees seniority with reference to the date of requisition. The seniority has to be with reference to the vacancy year."



11. The respondent Railway authorities, in addition to the plea that they have own set of guidelines or rules for grant of promotion, also took an alternative plea that award of additional weightage to promotee officers because of their long experience in similar post is not unknown in service jurisprudence. Reliance was placed in the case of *A. K. Nigam and Ors. Vs. Sunil Misra and Anr.*, reported in 1994 (Supp. 2) SCC 245. The CAT considered the stand of the respondents with regard to grant of weightage to the promotee officers and replied in the following terms :

“19. The applicant has in para 8.3 of his 'Reilef sought for' asked for direction to issue corrigendum/amendment/correction slip in the IREM Volume 1. Therefore, we feel obliged to examine the concerned provisions relation to inter-se seniority between DR and promotees from Group 'B'. The respondents have quoted the provisions of IAS [Regulation of Seniority] Rules, 1987 to draw a parallel. We cannot help observing that there is one obvious anomaly in the Railway policy, which can be a source of arbitrariness. In the IAS Regulations the reference is to 'year of allotment'. It is clearly defined that a direct recruit is given 'year of allotment' as the year following the competitive examination. When a State Civil Service Officer is promoted to IAS, he is given some weightage according to some formula and then assigned a 'year of allotment'. Thereafter, the promote officers en bloc rank below the direct recruits according to the 'year of allotment'. In this Scheme any vagaries or arbitrariness due to the date,



when a process is completed is removed. In Railways, on the other hand, the reference to seniority and inter se seniority is on the basis of DITS. This is clearly subject to unintended delays in completion of the process of one stream or the other, or in the worst case, human manipulation. For example, in the present case the DITS of the direct recruits of IRSSE 2008 batch is 14.12.2009. The corresponding Group 'B' Officers were inducted into Group 'A' on 08.05.2014. After giving them five years' seniority, their DITS became 05.05.2009 and these 87 Group 'B' Officers en bloc are placed above the IRSSE 2008 Batch. These dates are fortuitous and subject to procedural delays or human intervention. If the policy in IAS Regulations cited by the respondents themselves in their WS is considered as the model, the IRSSE 2008 Examination batch will be given 2009 as the 'Year of Allotment'. The Group 'B' promotees of 2014, after giving five years seniority, would get 2009 as the 'Year of Allotment'. Accordingly, they would be placed en bloc below the DR of the IRSEE 2008 Examination. In this Scheme, there is no room for uncertainties when the DR recruits join, or when the promotion order of Group 'B' officers is issued. Therefore, the basic philosophy of N.R. Parmar of removing arbitrariness because of date on which an action is completed with respect to the two streams holds good in this case also. Policy making is within the domain of the Executive, but this has to be reasonable and rational. Since there is obvious scope for arbitrariness in the Railways policy, we have to intervene in judicial review. The Railways must align their policy in consonance with this fundamental philosophy of N.R. Parmar.

20. Another serious anomaly we find



from the respondents' action is that while the ratio described for the DR and the promotees is 50:50, they have over the years inducted promotees about three times the number of direct recruits. In the representation before the Chairman, Railway Board, the applicant has shown that from the year 2001 to 2007 against 95 direct recruits, 376 promotees have been inducted. The Chairman, Railway Board has justified this on the ground that as per the government instructions, direct recruitment was curtailed to one-third for those years. Such government instructions cannot alter the basic principle of laid down ratio between the DR and promotees. If downsizing was the objective, this has to be done keeping the ratio between DR and promotees intact. To that extent, their decision runs counter to the underlying philosophy of N.R. Parmar.”

12. The Tribunal, therefore, felt that the anomalous situation has arisen because the Railway failed to consult the DOP&T, which was a mandatory requirement. If the Railway wanted to have a separate set of Rules or guidelines for grant of promotion, a divergent policy cannot be taken by any department without due approval of the UPSC/DOP&T and there is an object behind such a requirement that is to instill reasonableness and rationality which are the basic principles which govern inter-se seniority.

13. The Tribunal, therefore, set aside the impugned orders dated 09/12.06.2015 (Annexure-A/8 of the OA) as well as



order dated 12.12.2014 (Annexure-A/4 of the OA) since it was in teeth of the Hon'ble Apex Court judgment as well as the DOP&T OM and guidelines. A direction was issued to rework the seniority list in conformity with what the CAT had decided.

14. The present set of petitioners while assailing the order and decision of the CAT took a plea that Rule 334 to 341 of the Indian Railway Establishment Code was not taken into consideration. Such a Code is law by itself. The *N.R. Parmar's* decision (supra) or DOP&T OM have no applicability. The Railway is an independent organization and since they have their own set of rules in terms of the allocation of business rules of Government of India, the judgment and order of the CAT is flawed and required to be set aside. The statutory rules must prevail over executive instruction and since the Indian Railway Establishment Manual had been given a kind of statutory status, holding the same to be violative of OM dated 04.03.2014, has caused a serious illegality, which has a direct fall out upon the status and seniority position of the private respondents.

15. It was also urged on behalf of the petitioners that the Tribunal was in a kind of hurry. They were not given a fair opportunity of hearing and this too has affected their right of proper hearing and adjudication.



16. Before dealing with the other aspect of the matter, the private respondents have filed a reply to the supplementary affidavit of respondent No.1, where they have said in paragraph 3 that these petitioners have not approached the High Court with clean hands. They have suppressed material facts in the writ application. O.A. application of the private respondent was heard on 08.12.2015. The intervention petition, which was M.A. No. 53 of 2016, was filed by these petitioners, which was allowed on 05.02.2016. The order was de-reserved and the O.A. was heard at length on 05.02.2016. The Tribunal granted one week time to file written argument. These petitioners filed their written and detailed arguments beyond the period fixed by the Tribunal on 18.02.2016. All this was considered by the Tribunal and the judgment was rendered on 03.05.2016, but they have tried to create an impression as if the Tribunal was unfair to them and did not give them appropriate opportunity to assist and plead their case.

17. The argument on behalf of the private respondent is that proper legal provisions have not been brought to the notice of the Court. Rule 123 of the Railway Establishment Code, which is statutory in nature, and not Indian Railway Establishment Manual grants power to the Railway Board for recruitment etc. of Group-C and D posts. Rule 201 deals with appointment relating to Group-A,



which is required to be carried out by the UPSC. Rule 205 lays down the method of recruitment. Rule 209 deals with promotion. Rule 219 deals with recruitment and Rule 217 deals with Group-C and D posts. The status of Indian Railway Establishment Code being statutory in nature can be culled out from the decision rendered in the case of *The General Manager, South Central Railway, Secunderabad and Anr. Vs .A. V. R. Siddhantti and Ors.*, reported in AIR 1974 SC 1755, paragraph 31, being relevant, is reproduced hereinbelow:

“31. But what has been said above in regard to category (i) does not hold good in the case of the other two categories. Excepting that they were recruited by two different methods, in all other respects, these two categories were similarly situated. The mere fact that the names of persons in category (ii) were borne on a list of candidates prepared by the Selection Board for recruitment to regular Departments, did not give them a right to preferential treatment qua those in category (iii) in the matter of absorption and seniority in such departments. We have perused Paras 302, 303 and 304 of the Indian Railway Establishment Manual, Chapter III, 2nd Edition, relied upon by Mr. Sanghi. These are not statutory provisions (emphasis supplied). Even so, there is nothing in them to show that a person selected for a permanent department, by the Selection Board or Commission, gets a right to be appointed merely because of such selection and placement of his name on the select-list. He gets only a spec i.e. bare chance of appointment and that too if



the appointing authority so desires and a vacancy is available for him. All that the said provisions say, in substance, is that after their appointment, their inter se seniority will be fixed with reference to their positions in the merit list prepared by the Selection Board.”

18. Reliance in this regard was also placed to the case of *Union of India (Railway Board) and others Vs. J.V. Subhaiah and others etc. etc.*, reported in (1996) 2 SCC 258.

19. The arguments made, therefore, on behalf of the private respondent, is that the Railway Board has absolutely no power to make rules with regard to Group-A posts, the guidelines of the DOP&T with regard to Group-A are applicable. Therefore, there was obligation upon the Railway authorities to change the rules and the policy to bring it in conformity with OM dated 04.03.2014.

20. It is also urged on behalf of the private respondent that the distinction, which is sought to be drawn both by the petitioners and the Railway that the *N.R. Parmar's* case (supra) was a case arising out of a dispute relating to the Income Tax Department is wholly erroneous because one has to read the judgment in right perspective and totality. It is the principle laid down therein by the Apex Court which is of relevance and not whether it relates to Department A or B.



21. There are certain significant observations, which the Hon'ble Apex Court has made in paragraphs 34.1 and 34.2, which reads as under :

“34.1 If the process of recruitment has been initiated during the recruitment year (in which the vacancies have arisen) itself, even if the examination for the said recruitment is held in a subsequent year, and the result is declared in a year later (than the one in which the examination was held), and the selected candidates joined in a further later year (than the one in which the result was declared), the selected candidates will be entitled to be assigned seniority, with reference to the recruitment year (in which the requisition of vacancies was made). The logic and reasoning for the aforesaid conclusion (expressed in the ON dated 2.2.2000) is, if the process of direct recruitment is initiated in the recruitment year itself, the selected candidate(s) cannot be blamed for the administrative delay, in completing the process of selection.

34.2 The words "initiation of action for recruitment", and the words "initiation of recruitment process", were explained to mean, the date of sending the requisition to the recruiting authority.”

22. The above quoted paragraph itself indicates as to the status and what the relevant year for recruitment would mean for the appointed candidates. The Hon'ble Apex Court further brought more clarity to such issue by what it had to say with regard to the claim of



the promotees to be placed above direct recruits on the basis of actual date of appointment in following terms :

“50. The seniority rule applied in Jagdish Ch. Patnaik's case (supra) has been extracted in paragraph 24 of the said judgment. The seniority rule in question, inter alia expressed, that seniority would be determined with reference to the date of recruitment. In Suraj Prakash Gupta's case (supra), the relevant seniority rule was extracted in paragraph 53 which provided, that seniority would be determined with reference to the date of first appointment. The rule itself expressed that the words "date of first appointment" would mean the date of first substantive appointment against a clear vacancy. In Pawan Pratap Singh's case (supra) the question which arose for consideration, related to determination of inter se seniority between two sets of direct recruits. The first set comprised of vacancies advertised in 1987 which came to be filled up in 1994, and the second set comprised of vacancies of the year 1990 which came to be filled up in the year 1991. The controversy in Pawan Pratap Singh's case (supra) was conspicuously different from the controversy in hand. In view of the fact that the seniority rules, as also the factual matrix in the cases relied upon was substantially at variance with the relevant OMs dated 7.2.1986 and 3.7.1986 (which are the subject of interpretation in so far as the present case is concerned), as also the facts of the cases in hand, it is apparent, that the judgments relied upon by the learned Counsel are inapplicable to determine the present controversy.

51. One finds attracted to the observations recorded



in Jagdish Ch. Patnaik's case (supra) wherein it was observed,

"24.when the language used in the statute is unambiguous and on a plain grammatical meaning being given to the words in the statute, the end result is neither arbitrary, irrational or contrary to the object of the statute, then it is the duty of the court to give effect to the words used in the statute because the words declare the intention of the law making authority best".

We are of the view that the aforesaid observations are fully applicable to the present controversy. We may add that various ONs and letters issued by the DOPT (referred to above) do not leave room for any ambiguity.

52. Having interpreted the effect of the OM's dated 7.2.1986 and 3.7.1986 (in paragraphs 25 and 29 hereinabove), we are satisfied, that not only the requisition but also the advertisement for direct recruitment was issued by the SSC in the recruitment year in which direct recruit vacancies had arisen. The said factual position, as confirmed by the rival parties, is common in all matters being collectively disposed of. In all these cases the advertised vacancies were filled up in the original/first examination/selection conducted for the same. None of the direct recruit Income Tax Inspectors herein can be stated to be occupying carried forward vacancies, or vacancies which came to be filled up by a "later" examination/selection process. The facts only reveal, that the examination and the selection process of direct recruits could not be completed within the recruitment year itself. For



this, the modification/amendment in the manner of determining the inter-se seniority between the direct recruits and promotees, carried out through the OM dated 7.2.1986, and the compilation of the instructions pertaining to seniority in the OM dated 3.7.1986, leave no room for any doubt, that the "rotation of quotas" principle, would be fully applicable to the direct recruits in the present controversy. The direct recruits herein will therefore have to be interspaced with promotees of the same recruitment year."

23. Since the declaration of law by the Hon'ble Supreme Court had a major significance on the issue vexing inter-se seniority of direct recruits versus promotees, the Government of India, Ministry of Personnel, Public grievances and Pension, and the Department of Personnel and Training, had to issue office memorandum dated 04.03.2014 so that there may not be any kind of ambiguity wherever the issue of deciding inter-se seniority emerge. Since the Central Administrative Tribunal has also come to the opinion that besides *N.R. Parmar's* case (supra), the follow up OM dated 04.03.2014 also has vital significance. The OM is reproduced for ready reference :

Pension

"No. 20011/1/2012-Estt. (D)
Government of India
Ministry of Personnel, Public Grievances &
Department of Personnel & Training

North Block, New Delhi,
Dated the 4th March, 2014



OFFICE MEMORANDUM

Subject: Inter se seniority of direct recruits and promotees - instructions thereof

The undersigned is directed to refer to the subject mentioned above and to say that the fundamental principles of inter se seniority of direct recruits and promotees in Central Civil Services/posts were laid down in the Department of Personnel & Training (DOPT) O.M. No. 9/11/55-RPS dated 29.12.1959 which provided, inter alia, that the relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees, which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively, in the Recruitment Rules.

2. The carrying forward of unfilled slots of a vacancy year, for being filled up by direct recruits of later years, was dispensed with through modified instructions contained in DoPT O.M. No.35014/2/80-Estt.(D) dated 7.2.1986 which provides that rotation of quotas for purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees. The unfilled direct recruitment/promotion quota vacancies would be carried forward and added to the corresponding direct recruitment/promotion quota vacancies of the next year (and to subsequent years where necessary) for taking action for the total number of direct recruitment/promotion according to the usual practice. Thereafter, in that year, while seniority will be determined between direct recruits and promotees, to the extent of the number of vacancies for direct recruits and promotees, as determined according to the quota for that year, the additional direct recruits/promotees selected against the carried forward



vacancies of the previous year, would be placed en-bloc below the last promotee/direct recruit, as the case may be, in the seniority list, based on the rotation of vacancies for that year.

3. All the existing instructions on seniority were consolidated by DoPT through a single O.M. No. 22011/7/86-Estt(D) dated 03.07.1986.

4. In view of divergent stance taken by different Ministries/Departments on interpretation of 'available direct recruits and promotees' in the context of OM dated 7.2.86, the DoPT had issued O.M. No. 20011/1/2006-Estt.(D) dated 3.3.2008 which provided that the actual year of appointment, both in the case of direct recruits and promotees, would be reckoned as the year of availability for the purpose of rotation and fixation of inter se seniority.

5. The matter has been examined in pursuance of Hon'ble Supreme Court Judgment on 27.11.2012, in Civil Appeal No. 7514-7515/2005 in the case of N.R. Parmar vs. U01 & Ors in consultation with the Department of Legal Affairs and it has been decided, that the manner of determination of inter-se-seniority of direct recruits and promotes would be as under:

- a) DoPT OM No. 20011/1/2006-Estt.(D) dated 3.3.2008 is treated as nonexistent/withdrawn ob initio;
- 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. U01 & Ors). 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.**

7. As the conferment of seniority would be against the Recruitment Year in which the recruitment process is initiated for filling up of the vacancies, it is incumbent upon all administrative authorities to ensure that the recruitment process is initiated during the vacancy year itself. While requisition for filling up the vacancies for



direct recruitment should be sent to the recruiting agency, complete in all respects, during the vacancy year itself, the timelines specified in the Model Calendar for DPCs contained in DoPT O.M. No.22011/9/98-Estt(D) dated 8.9.98 and the Consolidated Instructions on DPCs contained in O.M. No.22011/S/86-Estt(D) dated April 10, 1989 should be scrupulously adhered to, for filling up the vacancies against promotion quota.

Sd/-
(Mukta Goel)
Director
Tele: No. 23092479

All Ministries/Departments of the
Government of India

Copy to:-

1. The President's Secretariat
2. The Vice-President's Sectt, New Delhi
3. The Prime Minister's Office, New Delhi.
4. The Cabinet Secretariat, New Delhi.
5. The Rajya Sabha Secretariat, New Delhi.
6. The Lok Sabha Secretariat, New Delhi.
7. The Comptroller and Audit General of India, New Delhi.
8. The Secretary, Union Public Service Commission, New Delhi
9. The Secretary, Staff Selection Commission, New Delhi.
10. All attached offices under the Ministry of Personnel, Public Grievances and Pensions.
11. All Officers and Sections in the Department of Personnel and Training.
12. Establishment(D) Section, DoP&T (10 copies)
13. NIC for updation on the website.

Sd/-
(Mukta Goel)
Director
Tele: No. 23092479”

24. The issue, therefore, is as to what would be the deciding principle while determining inter-se seniority between



direct recruits and promotees and since the office memorandum is applicable to one and all Ministries and Departments of Government of India across the board, the decision of the Chairman, Railway Board, that they are not bound by the OM or the decision of the Hon'ble Apex Court is a misplaced kind of understanding of law especially when the Indian Railway Establishment Manual is not statutory in nature, but is a codified set of guidelines only and it is the Indian Railway Establishment Code, which is statutory and wherein Rule 201 specifically lays down that so far as appointment of Group-A posts are concerned, they are to be done by the UPSC and not by the Railway. The power of the Railway is confined to Group- C and D posts alone. The Railway cannot shy away from following the OM issued by the DOP&T, which have been issued in terms of declaration of law by the highest Court of the land.

25. If these are the factual and legal position, then, this Court cannot disagree with the findings which have been given by the CAT that the order of the Chairman, Railway Board, rejecting the representation of the direct recruits on the ground that the Railway have their own Code and would be bound by it is a totally wrong understanding especially keeping in mind that there is no power to exercise with regard to Group-A officers. Their recruitment is done by the UPSC and the DOP&T's OM has applicability across the



board upon all Ministries and Departments and if the Railway want to deviate from the principle, they had an obligation to seek clearance or clarification from the DOP&T or in the alternative they had duty cast upon them to amend the provisions in place for the Railway to bring it in harmony and consonance with the OM dated 04.03.2014.

26. The Central Administrative Tribunal's decision dated 03.05.2016 does not suffer from any irrationality and does not warrant any interference.

27. Writ application, therefore, is dismissed.

(Ajay Kumar Tripathi, J)

Nilu Agrawal, J :

(Nilu Agrawal, J)

Pawan/-

AFR/NAFR	A.F.R.
CAV DATE	07.03.2017
Uploading Date	12.05.2017
Transmission Date	N/A

