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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 23.08.2017

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Judgment delivered on: 22 .01.2018

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W.P.(C) 3087/2016

MS VEENA KOTHA VALE

..... Petitioner

Through: Ms. Jyoti Singh, Sr. Adv with Mr. R. Balasubramanian, Ms.Aarti Sharma, Mr.Himanshu Gautam, Mr.Santosh Kumar & Mr.Padma Kumar, Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Sanjeev Narula, CGSC with Ms.Anunita Chandra, Advocate for UoI.
Mr. Sanjay Poddar, Sr. Adv with Ms.Saahila Lamba & Mr.Govind Kumar, Advs for R-5.
Mr.Naresh Kaushik, Adv for UPSC.

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W.P.(C) 8443/2016

DIWAKAR SINGH

..... Petitioner

Through: Mr. Sanjay Poddar, Sr. Adv with Ms. Saahila Lamba & Mr. Govind Kumar. Advs.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Sanjeev Narula, CGSC with Ms.Anunita Chandra, Adv for UoI.
Mr. Naresh Kaushik, Adv for UPSC.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

JUDGEMENT

REKHA PALLI (J)

1. The present Writ Petitions assail the order dated 04.03.2016 passed by Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No.1194/2015, whereby the Tribunal has rejected the claim of Ms. Veena Kothavale, the Petitioner in W.P.(C) No. 3087/2016 for quashing the seniority list dated 27.02.2015 of the post of Deputy Legislative Counsel (Grade III) (hereinafter referred to as 'DLC') of Indian Legal Services (hereinafter referred to as 'ILS') in which she had been shown as junior to Shri Diwakar, the Petitioner in W.P.(C) No.8443/2016. The Tribunal has however, granted liberty to Ms.Kothavale to make a representation for working out her claim for her adjustment on the said post of DLC against direct recruitment quota on the basis of the selection process in which she had been placed at the top of the panel, but had earlier given up her claim against direct recruitment quota by joining the said post of DLC against the promotee quota.

2. Mr. Diwakar Singh is also aggrieved by the same order of the Tribunal impugned by Ms.Veena Kothavale, in so far as it grants liberty to Ms.Kothavale to make a representation and directs that till her representation is decided, his promotion to the post of Additional Legislative Counsel would remain provisional. It may be noted that Shri Diwakar Singh is Respondent No.5 in W.P.(C) 3087/2016 filed by Ms. Veena Kothavale. Vide this common judgment, we are deciding both the Writ Petitions and for the sake of convenience, Ms. Veena Kothavale who is the Petitioner in

W.P.(C) No.3087/2016, is being hereinafter referred to as the Petitioner, while Shri Diwakar Singh is being hereinafter referred to as Respondent No.5 as per their position in W.P.(C)No.3087/2016.

3. The Petitioner had filed the aforesaid O.A. challenging the final 'Seniority List' dated 27.02.2015 of DLC of ILS in the Legislative Department, Government of India, wherein she had been placed as junior to Respondent No.5 even though, ever since their appointment/promotion to the post of DLC, she had always been placed as senior to him in the successive seniority lists issued in 2010, 2011 and 2014.

4. The brief facts as emerge from the record are that the Petitioner had joined the ILS on 19.11.2003 by way of direct recruitment to the post of Assistant Legislative Counsel (Grade IV) (hereinafter referred as 'ALC') of the ILS. Though Respondent No.5 had also been appointed as ALC in the same selection process but based on her merit in the selection process, the Petitioner had been placed above the Respondent No.5 in the Seniority List of ALCs, i.e. the Petitioner was placed at No.1 position in the selection list, while Respondent No.5 was placed at the fourth position.

5. The conditions of service of members of the ILS is governed by the Indian Legal Service Rules 1957, as amended from time to time, and as per these Rules, the next promotional post which both the Petitioner and the Respondent No.5 became eligible for, upon completion of three years of service in the grade of ALC, was that of DLC. It may be noted that though the Respondent No.5 had joined the ILS as ALC on 16.09.2003 i.e. before the joining of the Petitioner, who joined the ILS as ALC on 19.11.2003, he

was placed below the Petitioner in the Seniority List, since the Seniority List was based on merit in the selection process.

6. In the year 2007, four posts of DLC fell vacant which, as per the Recruitment Rules, were to be filled in the ratio of 50% by direct recruitment and 50% by promotion. Accordingly, while two posts of DLC were earmarked for direct recruitment, the remaining two posts were to be filled by promotion of a member of the service in ALC as per the provisions of Rule 6 (2) of the ILS Rules 1957.

7. The requisition for filling up two posts by way of promotion and the other two posts by way of direct recruitment were both sent to the UPSC in July, 2007. Though the Petitioner applied for the said post against the direct recruitment quota, she was not called by the UPSC for interview to be held on 27-28th November, 2008. The Petitioner had, therefore, approached the Tribunal, by way of O.A. No.2553/2008 and based on an interim order dated 25.11.2008 she was called for an interview, in which – from amongst the total 19 candidates who had appeared, the Petitioner was placed at 1st position in the order of merit, while the Respondent No.5 was placed at 4th position in the order of merit and was accordingly placed in the reserve list alongwith 9 other candidates. However, due to the pendency of the Petitioner's O.A., the result of this selection process against the direct recruitment quota was kept in abeyance.

8. Before the results of the selection process held for filling the two posts against direct recruitment quota could be declared, the two vacancies for the year 2007 against the promotee quota were filled by promotion of

Shri Udaya Kumara and Mrs. Sudha Rani Relangi (Respondent No.6), who were senior to both the Petitioner and Respondent No.5. While the Petitioner's O.A. for seeking appointment to the post of DLC against the direct recruitment quota vacancies of the year 2007 was pending before the Tribunal, she was, vide order dated 01.06.2009, promoted as DLC w.e.f. 25.05.2009.

9. This promotion of the Petitioner as DLC on 01.06.2009 was against the vacancies in the promotion quota which had arisen in the year 2009. After the Petitioner already stood promoted as a DLC w.e.f. 25.05.2009, the result of the selection process for filling the vacancies for the year 2007 against direct recruitment quota of DLC was declared on 04.03.2010 and, since the Petitioner already stood promoted as DLC w.e.f. 25.05.2009, Shri Sudhi Ranjan Mishra – who was second in the merit list in this selection process was offered appointment, but he did not join the said post. On 28.07.2010, the Petitioner also withdrew her O.A. No. 2553/2008, wherein she had sought appointment as a DLC against the direct recruitment quota, as she already stood promoted to the same post w.e.f. 25.05.2009.

10. Pertinently, when the petitioner withdrew her O.A. – in which she had staked her claim for appointment as DLC against the direct recruitment quota, it was the DOP&T's O.M. No.20011/1/2006-Estt.(D) dated 03.03.2008 which was holding the field for determining inter se seniority amongst Direct Recruits and Promotees, according to which, the seniority of a direct recruit to a post had to be determined on the basis of the date of appointment to the post, irrespective of the year in which the vacancy had arisen or the process of recruitment had been initiated.

11. After the Petitioner had withdrawn her O.A. on 28.07.2010 – thereby giving up her claim against the direct recruitment quota, Respondent No.5, who was on the reserve panel was offered the post of DLC and, accordingly, he joined as a direct recruit DLC on 07.10.2010. Thus, the admitted position was that the Petitioner had joined as DLC on 25.05.2009 as a promotee against the promotion quota, while Respondent No.5 joined the post of DLC on 07.10.2010 as a direct recruit. Consequently, when the Respondents No. 1 to 4 issued the Seniority Lists of DLCs on 25.10.2010, 15.09.2011 and lastly on 07.03.2014, the Petitioner, in view of her having joined the post of DLC much earlier than Respondent No.5, was shown as senior to Respondent No.5. It is also an undisputed position that no objection of any kind was raised by Respondent No.5 to any of the aforesaid three Seniority Lists.

12. On 04.03.2014, the DOP&T i.e. Respondent No.3 issued an Office Memorandum by placing reliance on the judgment dated 27.11.2012 of the Apex Court in the case of ***Union of India v. N.R. Parmar***, (2012) 13 SCC 340, wherein the principle that *inter se* seniority between direct recruits and promotees would be determined on the rotation of quota based on ‘available’ direct recruits and promotees, who are appointed against the vacancies of a recruitment year, was reiterated. This OM further clarified that recruitment year would be the year of initiating the recruitment process against a vacancy year, which in turn would be the date of sending of the requisition for filling up the vacancies to the recruiting agency/DPC. Thus, the effect of the O.M was that seniority became dependent upon the date of

initiation of the recruitment process, and not on the date of actual appointment.

13. Soon after the issuance of this OM dated 04.03.2014, Respondents No. 1 to 4 issued another Seniority List dated 07.03.2014, in which the earlier seniority position, according to which the Petitioner was senior to Respondent No.5, was reiterated. Based on this Seniority List dated 07.03.2014 the Petitioner was given ad-hoc promotion to the higher post of Additional Legislative Counsel.

14. On 24.04.2014, by placing reliance on the decision of the Apex Court in *N.R. Parmar* (supra), Respondent No.5 submitted a representation dated 24.06.2014, claiming therein that – having been appointed as a direct recruit against the vacancy of the year 2007 – for which the recruitment process had been initiated in 2007 itself, he was entitled to be granted seniority vis-a-vis promotees of 2009 and, therefore, he ought to be treated as senior to the Petitioner who had, admittedly, been promoted as a DLC only against the vacancy of the year 2009.

15. It further appears that based on this representation submitted by the Respondent No.5, a Draft Seniority List of DLC was circulated on 23.01.2015 and in this Seniority List, the Petitioner was – for the first time, placed below Respondent No.5 as a DLC. On 02.02.2015, the Petitioner filed objections to the aforesaid Draft Seniority List dated 23.01.2015 which were rejected and the final revised seniority list of DLC showing the Petitioner as junior to Respondent No.5 was published on 27.02.2015.

16. Based on this revised Seniority List dated 27.02.2015, a DPC for the next promotional post of Additional Legislative Counsel, initially scheduled for 17.02.2015 was held on 02.03.2015 and based on the revised Seniority List, Respondent No.5 having been placed as senior to the Petitioner, was recommended for promotion as Additional Legislative Counsel.

17. At this stage, the Petitioner preferred the aforesaid O.A. challenging the revised Seniority List dated 27.02.2015 in the Grade of DLC as well as the order dated 22.02.2015 rejecting her representation dated 02.02.2015, whereby she had challenged the Draft Seniority List dated 23.01.2015. Before the Tribunal, the submission of the Petitioner mainly was that all the three successive seniority lists dated 27.10.2010, 15.09.2011 and 07.03.2014 – wherein she had been shown as senior to Respondent No.5, had been prepared in accordance with the statutory rules of ILS, and once the seniority had been fixed as per the ILS Rules and the same had been accepted without any objection by all the affected parties, there was no power vested with any authority to subsequently alter the settled seniority to her detriment.

18. The Petitioner had also contended before the Tribunal that right from the date of her entry into the ILS, she had been occupying a much higher position in the seniority list as compared to Respondent No.5 and had thus acquired a right which could not be later taken away on the basis of a subsequent OM or decision. The Petitioner had, with reference to the DOP&T's O.M. dated 04.03.2014, also contended before the Tribunal that there was no direction either in the OM or in the decision of the Supreme Court in the case of **N.R. Parmar** (supra) to reopen the settled seniority of

the direct recruits and promotees which already stood finalised in terms of the statutory rules.

19. Opposing the Petitioner's O.A, the Respondents No.1 to 4, as well as Respondent No.5, filed separate Counter Affidavits before the Tribunal defending the issuance of a revised seniority list. They contended that the revised seniority list was in consonance with the judgment of the Supreme Court in **N.R. Parmar** (supra) which, according to them, mandated that the seniority of the candidates had to be fixed in accordance with O.Ms dated 07.02.1986 and 03.07.1986, which prescribe that when the process of recruitment is initiated during the recruitment year i.e. the year in which the vacancies had arisen, the selected candidates would be entitled to be assigned seniority with reference to the same year.

20. The plea of Respondents No.1 to 4 before the Tribunal was that, in view of the law declared by the Supreme Court in the case of **N.R. Parmar** (supra), once the DOP&T had issued OM dated 04.03.2014 withdrawing its earlier O.M. dated 03.03.2008 – which OM was the only basis for fixing the Petitioner claiming seniority over Respondent No.5, it was incumbent upon them to refix the *inter se* seniority of direct recruits and promotees in accordance with the guidelines issued vide O.M. dated 04.03.2014. Similarly, Respondent No.5 had also, while supporting the issuance of revised seniority list before the Tribunal, contended that in view of the decision of the Supreme Court in the case of **N.R. Parmar** (supra), Respondents No.1 to 4 had rightly refixed his seniority as a direct recruit DLC with reference to the date of sending of the requisition for filling up the vacancies of DLC (Grade III) in the year 2007 by way of direct recruitment.

21. The Tribunal, after considering the submissions of the parties and examining all the DOP&T's O.Ms on the subject issued right from 22.12.1959 to 04.03.2014, came to the conclusion that, once the DOP&T had, in consonance with the decision of the Supreme Court set at rest the controversy regarding interpretation of the expression 'recruitment year', the action of Respondent Nos.1 to 4 in issuing a fresh revised seniority list could not be faulted. The Tribunal also observed that though it was true that in *N.R. Parmar* (supra) the Supreme Court had not given any direction for revising or unsettling Seniority Lists previously settled, once the OM dated 03.03.2008 – which was the basis of fixation of the *inter se* seniority of the parties, itself had been quashed by the Supreme Court, the department was justified in revising the Seniority List in accordance with the said decision of the Supreme Court.

22. Keeping in view the peculiar facts of the case, the Tribunal vide its impugned order, while declining to interfere with the revised Seniority List dated 27.02.2015, granted liberty to the Petitioner to work out her claim for her adjustment on the post of DLC against direct recruitment quota of the year 2007, on the basis of her selection in the direct recruitment process, which claim she had given up even though she had been placed at the top of the Panel, as by then she had already been promoted to the said post of DLC against a vacancy of the year 2007.

23. Vide the impugned order of the Tribunal, the Petitioner was, accordingly, given liberty to submit a representation in this regard with a direction to the Respondents to examine the same, and it was further directed that till her representation was decided, the promotion of

Respondent No.5 to the next higher post of Additional Legislative Counsel would remain provisional.

24. Aggrieved by the aforesaid order of the Tribunal, both the Petitioner and Respondent No.5 have approached this Court. The Petitioner is aggrieved by the refusal of the Tribunal to quash the revised Seniority List dated 27.02.2015 and, on the other hand, Respondent No.5 is aggrieved by the liberty granted by the Tribunal to the Petitioner to submit a representation for working out her claim for her adjustment on the post of DLC against direct recruitment quota of the year 2007, which she had given up – which led to the appointment of the Respondent No.5 as a DLC against the vacancy of direct recruitment quota for the year 2007, in which selection he was a wait listed candidate.

25. Arguing for the Petitioner, Ms. Jyoti Singh, Learned Senior Counsel, while reiterating the submissions made before the Tribunal, contends that once the *inter se* seniority of the parties had been crystallized in accordance with the instructions as existing on 27.10.2010 – when the first seniority list qua the parties was finalized, the same could not be reopened or revised to the detriment of the Petitioner when it was an admitted fact that no challenge had ever been laid by Respondent No.5 or any other candidate to any of the three successive seniority lists issued between 27.10.2010 to 07.03.2014.

26. Ms. Singh, further submits that it being an admitted fact that the Petitioner was placed on the top of the panel for direct recruitment against the vacancies for the year 2007, in which panel the Respondent No.5 was, admittedly, only a wait listed candidate, it would be most unfair and unjust

to grant him seniority over the Petitioner, and that too despite his having not raised any objection to his placement below the Petitioner, in the successive Seniority Lists issued from 2010/2011 itself. Learned counsel submits that as per the DOP&T's instructions contained in the O.M. dated 03.03.2008, which was prevailing at the time of the Petitioner's joining the post of DLC against the vacancy in the promotee quota of the year 2009, the seniority of the direct recruits had to be fixed as per their date of joining the service. She thus submits that – since Respondent No.5 had admittedly not joined the post of DLC, when the Petitioner stood promoted as DLC on 25.05.2009, she could not be put to any disadvantage for giving up her claim for direct recruitment, as she was aware that as per the then existing legal position (as reflected in the O.M. dated 03.03.2008), the DLCs who would have joined pursuant to the selection made against vacancies of the direct recruitment quota for the year 2007, would only be entitled to get seniority from the date of their joining.

27. Ms. Singh further submits that the action of the Respondents in revising the already finalized seniority list, by placing reliance on the decision of the Supreme Court in the case of **N.R. Parmar** (supra) and the OM dated 04.03.2014, was wholly erroneous. She submits that neither the decision of the Supreme Court in the case of **N.R. Parmar** (supra) directed reopening of the already finalized and settled Seniority positions, nor the OM dated 04.03.2014 envisages such an action. She submits that, on the other hand, the OM dated 04.03.2014 clearly lays down that the cases of settled seniority would not be reopened. She, thus, submits that there was no justification on the part of the Respondents to revisit the Seniority List,

and that too on the eve of holding the DPC for the promotional post, which was fixed for 17.02.2015.

28. Ms. Singh further submits that even otherwise, the cut-off date for the holding the DPC was 01.01.2014 and on that date the Petitioner was, admittedly, senior to Respondent No.5 and, therefore, according to her even if the matter is looked at from that point of view, there was no justification on the part of the Respondents in deliberately postponing the DPC which was initially scheduled to be held on 17.02.2015. She submits that the DPC was deliberately postponed only to favour the Respondent No.5, and thus submits that the action of the Respondents in revising the Seniority List is arbitrary and unfair.

29. Lastly, Ms. Singh submits that the Tribunal having realised the injustice caused to the Petitioner has, instead of undoing the same, merely relegated her to submit a representation to the Respondent. She thus contends that the Tribunal has failed to exercise its jurisdiction by declining to quash the Seniority List dated 27.02.2015.

30. Ms. Jyoti Singh, learned senior counsel for the Petitioner has also relied on the following judgments, in support of her submission that seniority once settled is decisive in the upward march in the service career of the employees, and ought not to be disturbed after a lapse of time:-

- (i) ***Baburam Vs. C.C. Jacob & Ors.***, (1999) 3 SCC 362 (para 5);
- (ii) ***Akhil Bhartiya Soshit Karamchari Sangh & Anr. Vs. UOI & Ors.***, (1996) 6 SCC 65 (para 6);

- (iii) ***Ramaswamy G.T. & Ors. Vs. State of Karnataka***, (1985) SCC Online Kar 407 (paras 36, 48);
- (iv) ***P. Sudhakar Rao & Ors. Vs. U. Govinda Rao & Ors.***, (2013) 8 SCC 693;
- (v) ***State of U.P. & Ors. Vs. A.K. Srivastava***, (2014) 14 SCC 720 (paras 20 to 24);
- (vi) ***UOI & Anr. Vs. Major Bahadur Singh***, (2006) 1 SCC 368 (Paras 9 to 12);
- (vii) ***Padmasundara Rao & Ors. Vs. State of T.N. & Ors.***, JT (2002) 3 SC 1 (Para 9);
- (viii) ***H.S. Vankani & Ors v. State of Gujarat & Ors.***, (2010) 4 SCC 301 (paras 38, 39, 43 to 48); and,
- (ix) ***Malcome Lawrence Cecil D'Souza vs. Union of India***, (1976) 1 SCC 599.

31. On the other hand, Mr. Sanjeev Narula, learned Central Government Standing Counsel appearing for the Respondents No. 1 to 4 supports the impugned order of the Tribunal. He contends that once the Supreme Court quashed the OM dated 03.03.2008, which was the very basis of fixing the *inter se* seniority of the Petitioner and Respondent No.5 right from 2010 to 2014, the Respondents were duty bound to take corrective action in accordance with the decision of the Supreme Court. He further submits that the Supreme Court having declared the OM dated 03.03.2008 *non est* to the

extent that it is in contravention of the earlier OMs dated 07.02.1986 and 03.07.1986, the Respondents were not only justified, but were under an obligation to implement the directions of the Supreme Court and prepare the Seniority List in accordance with OMs dated 07.02.1986 and 03.07.1986. He, thus, submits that as long as the revised Seniority List dated 27.02.2015 is in consonance with the OMs dated 07.02.1986 and 03.07.1986, no challenge can be laid to the said Seniority List. Mr. Narula, while referring to various decisions of the Supreme Court, submits that it is settled legal position laid down in the case of ***Golak Nath vs. State of Punjab***, AIR 1967 SC 1643, that law declared by the Supreme Court will always have retrospective effect, unless otherwise restricted in its operation. He contends that the power of prospective overruling is vested only with the Supreme Court, and that too in constitutional matters. While drawing our attention to the decision of the Supreme Court in ***N.R. Parmar*** (supra), he submits that though it was open to the Supreme Court to direct prospective overruling, but the Supreme Court having not done so, it was not open to the Tribunal, and it is not open to this Court to invoke the doctrine of prospective overruling. He, therefore, contends that the revised Seniority List, having been prepared in accordance with the principles laid down in the decision of the Supreme Court, was unassailable.

32. Mr. Narula has also placed reliance on a decision of a Coordinate Bench of this Court in the ***Union of India & Anr. v. Sudhanshu Kumar Khare & Ors.*** in W.P.(C) No. 7370/2010 decided on 22.05.2015, to contend that this Court has, by applying O.M. dated 04.03.2014, directed the refixing

of *inter se* seniority of parties in cases where the seniority already stood settled years ago.

33. Appearing for the Respondent No.5, Mr. Sanjay Poddar, Learned Senior Counsel had also supported the impugned order of the Tribunal to the extent the Tribunal rejected the claim of the Petitioner for quashing the Seniority List dated 27.02.2015. Mr. Poddar submits that in view of the admitted fact that all the earlier Seniority Lists – right from October, 2010, had been prepared on the basis of OM dated 03.03.2008, the same had to be recalled and, consequently, in view of the declaration of law by the Supreme Court, the seniority had to be fixed in accordance with OMs dated 07.02.1986 and 03.07.1986. Mr. Poddar submits that once the OM dated 03.03.2008 has been declared *non est*, the seniority had to be fixed on the rota-quota principle, and the Respondent No.5 having been appointed against the direct recruitment vacancy of the year 2007, he was rightly given seniority over the Petitioner – a promotee against a vacancy of the year 2009. He submits that the Petitioner having consciously given up her claim for being appointed as a direct recruit against the vacancy of the year 2007 – for whatever reasons she may have had, and having accepted promotion as a DLC against the vacancy of the year 2009 cannot, at this belated stage, contend that her claim for appointment against the direct recruitment quota should be revived.

34. Mr. Poddar has relied on the following judgments in support of his submissions:-

- (i) ***P.V. George & Ors. v. State of Kerala & Ors.***, (2007) 3 SCC 557;

- (ii) *M. A. Murthy v State of Karnataka & Ors.*, (2003) 7 SCC 517;
- (iii) *B.A Linga Reddy and Ors. v. Karnataka State Transport Authority and Ors.*, (2015) 4 SCC 515;
- (iv) *Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur and Ors.*, (2013) 5 SCC 427; and
- (v) *Sarguja Transport Service v S.T.A.T.*, AIR 1987 SC 88.

35. We have considered the rival contentions of the parties and perused the record. In our view, two interconnected issues arise for consideration in the Petition. The first is: Whether the *inter se* seniority of direct recruits and promotees fixed prior to 27.11.2012 i.e. the date of the decision of the Supreme Court in the case of *N.R. Parmar* (supra), can be reopened despite the same having attained finality by following the prescribed process. The second related issue is: Whether, in view of the admitted fact that no challenge had been raised by the Respondent No.5 to any of the three Seniority List issued in 27.10.2010, 15.09.2011 and 07.03.2014 (which was issued after the decision of the Supreme Court in *N.R. Parmar* (supra), were the Respondents No.1 to 4 justified in changing the already settled *inter se* seniority of the parties, by merely stating that the revised Seniority List was prepared in consonance with the decision of the Supreme Court in the case of *N.R. Parmar* (supra).

36. Before dealing with the rival contentions of the parties, it would be appropriate to highlight one of the salient features of the Office Memoranda

issued from time to time, dealing with the subject of inter se seniority of Direct Recruits and Promotees in respect of employees of Central Services. This aspect is relevant for the present discussion. The aspect that we wish to highlight does not concern the principles laid down for determination of inter se seniority of Direct Recruits and Promotees *per se*, but the manner in which the said principles have been made applicable. *Inter alia*, the subject of inter se seniority of Direct Recruits and Promotees has been dwelt with by several OMs, starting from the OM No.9/11/55-RPF dated 22.12.1959. The OM dated 22.12.1959 laid down the general principles for determining seniority of various categories of persons employed in Central Services. This OM referred to the earlier instructions issued from time to time by the Government, particularly those issued on 22.06.1949, 03.02.1950, 27.04.1951 & 04.08.1956. The said OM contained the following governmental decision:

“... .. It has, therefore, been decided in consultation with the UPSC, that hereafter the seniority of all persons appointed to the various Central Services after the date of these instructions should be determined in accordance with the General Principles annexed here to.

3. The instructions contained in the various Office Memorandum cited in para 1 above are hereby cancelled, except in regard to determination of seniority of persons appointed to the various Central Services prior to the date of this Office Memorandum. The revised General Principles embodied in the Annexure will not apply with retrospective effect, but will come into force with effect from the date of issue of these orders; unless a different date in respect of any particular service/grade from which these revised principles are to be adopted for purposes of determining seniority has

already been or is hereafter agreed to by this Ministry.”
(emphasis supplied)

37. The general principles for determination of seniority in the Central Services, annexed to this OM, inter alia, provided under Principle No.6 the principle to be followed for fixation of “*Relative seniority of Direct Recruits and Promotees*”. An explanatory memorandum to the general principles was also issued.

38. The OM dated 22.12.1959, insofar as it dwelt with the principles of fixation of inter se seniority of Direct Recruits and Promotees, was followed by the OM dated 07.02.1986. This O.M. was issued to deal with situation arising on account of delay in the filling of vacancies which, under the Recruitment Rules, were required to be filled by one or the other methods of recruitment, i.e. Direct Recruitment or Promotion. The relevant extracts of the OM dated 07.02.1986 are reproduced herein below:-

“

O.M. dated 07.02.1986

Sub: General Principles for determining the seniority of various categories of persons employed in Central Services.

As the Ministry of Finance etc. are aware, the General Principles for determination of seniority in the Central Services are contained in the Annexure to Ministry of Home Affairs O.M. No. 9/11/55-RPS dated 22nd December 1959. According to Paragraph-6 of the said Annexure, the relative seniority of direct recruits and promotees shall be determined according to rotation of vacancies between the direct recruits and the promotees, which will be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules. In the Explanatory Memorandum to these Principles, it has been stated that a roster is required to be maintained based on the reservation of vacancies for direct

recruitment and promotion in the Recruitment Rules. Thus where appointment to a grade is to be made 50% by direct recruitment and 50% by promotion from a lower grade, the inter-se-seniority of direct recruits and promotees is determined on 1:1 basis.

2. x x x x x x x x x

3. This matter, which was also discussed in the National Council has been engaging the attention of the Government for quite some time and **it has been decided that in future, while the principle of rotation of quotas will still be followed for determining the inter-se seniority of direct recruits and promotees, the present practice of keeping vacant slots for being filled up by direct recruits of later years, thereby giving them unintended seniority over promotees who are already in position, would be dispensed with.** Thus, if adequate number of direct recruits do not become available in any particular year, rotation of quotas for purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees. In other words, to the extent direct recruits are not available, the promotees will be benched together at the bottom of the seniority list, below the last position upto which it is possible to determine seniority on the basis of rotation of quotas with reference to the actual number of direct recruits who become available. The unfilled direct recruitment quota vacancies would, however, be carried forward and added to the corresponding direct recruitment vacancies of the next year (and to subsequent years where necessary) for taking action for direct recruitment for the total number 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 selected against the carried forward vacancies of the previous year would be placed en-bloc below the last promotee (or direct recruit as the case may be) in the seniority list based on the rotation of vacancies for that year. The same principle holds good in determining seniority in the event of

carry forward, if any, of direct recruitment or promotion quota vacancies (as the case may be) in the subsequent years.

Illustration:

x x x x x x x x x x

7. These orders shall take effect from 1st March 1986. Seniority already determined in accordance with the existing principles on the date of issue of these orders will not be reopened. In respect of vacancies for which recruitment action has already been taken, on the date of issue of these orders either by way of direct recruitment or promotion, seniority will continue to be determined in accordance with the principle in force prior to the issue of this O.M.

8. Ministry of Finance etc. are requested to bring these instructions to the notice of all the Attached/Subordinate Offices under them to whom the General Principles of Seniority contained in O.M. dated 22.12.1959 are applicable within 2 week as these orders will be effective from the next month.”
(emphasis supplied)

39. The DOP&T issued the O.M. dated 03.07.1986, which was merely a consolidating order and did not say anything new or different from what was stated in the O.M.s dated 22.12.1959 and 07.02.1986.

40. The same was followed by the O.M. dated 03.03.2008, which purported to clarify the aspect of “*year of availability*” in the context of the O.M. dated 03.07.1986. Insofar as it is relevant, the O.M. dated 03.03.2008 read:

O.M. dated 03.03.2008

Subject: Consolidated instructions on seniority contained in DoP&T OM No.22011/7/1986-Estt.(D) dated 3-7-1986 – clarification regarding.

The undersigned is directed to refer to this Department's consolidated instructions contained in OM No.22011/7/86-Estt.(D) dated 3.7.1986 laying down the principles on determination of seniority of persons appointed to services/posts under the Central Government.

2. Para 2.4.1 and 2.4.2 of the OM dated 3.7.1986 contains the following provisions :-

2.4.1 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 quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules.

2.4.2 If adequate number of direct recruits does not become available in any particular year, rotation of quotas for the purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees.

*3. Some references have been received seeking clarifications regarding the term 'available' used in the preceding para of the OM dated 3.7.1986. **It is hereby clarified that while the inter-se seniority of direct recruits and promotees is to be fixed on the basis of the rotation of quota of vacancies, the year of availability, both in the case of direct recruits as well as the promotees, for the purpose of rotation and fixation of seniority, shall be the actual year of appointment after declaration of results/ selection and completion of pre-appointment formalities as prescribed. It is further clarified that when appointments against unfilled vacancies are made in subsequent year or years either by direct recruitment or promotion, the persons so appointed shall not get seniority of any earlier year (viz. year of Vacancy/panel or year in which recruitment process is initiated) but should get the seniority of the year in which they are appointed on substantive basis. The year of availability will be the vacancy year in which a candidate of the particular batch of selected direct recruits or an officer of the particular batch of promotees joins the post/service.***

4. Cases of seniority already decided with reference to any other interpretation of the term ‘available’ as contained in OM dated 3.7.1986 need not be reopened.

5. Hindi version will follow.” (emphasis supplied)

41. The position which, thus, emerges from a perusal of the aforesaid OMs is that they consistently laid down that the *inter se* seniority between the direct recruits and the promotees would be based on the rotation of quota of vacancies required to be filled from the two sources.

42. Pertinently, each of the OMs aforesaid, except the O.M. dated 03.07.1986 – which was only a consolidating O.M. and said nothing new or different from the earlier ones, provided that the said O.M.s shall not affect settled seniority positions. We have consciously highlighted the relevant paragraphs in the said O.M.s, which state so.

43. The O.M. dated 03.03.2008, though issued on the subject of ‘clarification’ of the OM dated 03.07.1986, went contrary to the well-established rule position operating since the issuance of the OM dated 22.02.1959, which was continued vide OM dated 07.02.1986 as well as by the consolidating OM dated 03.07.1986. In ***N.R. Parmar*** (supra) and the Supreme Court set at naught the O.M. dated 03.03.2008 primarily on the premise that under the garb of issuing clarification in respect of the OM dated 03.07.1986, the parameters laid down by the earlier OMs dated 07.02.1986 and 03.07.1986 could not be breached. The relevant extract from ***N.R. Parmar*** (supra) reads as follows:

“ In its determination the CAT, Ahmedabad held, that seniority of direct recruits would have to be determined with

reference to the date of their actual appointment. The implicit effect of the aforesaid determination was, that the date of arising of the direct recruit vacancies, or the date of initiation of the process of recruitment, or the date when the Staff Selection Commission had made recommendations for the filling up direct recruit vacancies, were inconsequential for determination of seniority of direct recruits.

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22. ***During the course of hearing, learned Counsel for the rival parties agreed, that the seniority dispute between the promotee and direct recruit Income Tax Inspectors of the Income Tax Department was liable to be determined on the basis of office memoranda dated 7.2.1986 and 3.7.1986, read with the clarificatory office memoranda and office notes. It is important to notice, before embarking upon the claim of the rival parties, that none of the parties have assailed the vires of the office memoranda dated 7.2.1986 and 3.7.1986 (or for that matter, the clarificatory office memoranda/office notes). It is therefore apparent, that the dispute between the rival parties is nothing but, the true and correct interpretation of the office memoranda dated 7.2.1986 and 3.7.1986, read with clarificatory office memoranda and office notes. It is therefore, that the matter in hand is being examined in the light of the aforesaid office memoranda.***

23. ***General principles for determining seniority in Central services are shown to have been laid down in an annexure to an office memorandum dated 22.11.1959 issued by the Government of India, Ministry of Home Affairs (hereinafter referred to as "the OM dated 22.11.1959"). Paragraph 6 of the annexure, referred to above, laid down the manner of determining inter se seniority between direct recruits and promotees. Paragraph 6 is being extracted hereunder:***

"6. Relative seniority of Direct Recruits and Promotees. 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 Department Rules."

It is apparent from the above extract of the OM dated 22.11.1959, that the "quota" between promotees and direct recruits was to be read into the seniority rule. The OM also provided for a definite rotation of seniority points ("rota") between promotees and direct recruits. The rotation provided for was founded on the concept of rotation of quotas between promotees and direct recruits. It is therefore apparent, that under the OM dated 22.11.1959 inter se seniority between the promotees and direct recruits was based on the "quota" and "rota" principle. The same has been meaningfully described as "rotation of quotas" in some of these instruments.

24. *The aforesaid prescription of the manner of determining inter se seniority between the direct recruits and promotees, determined through the OM dated 22.11.1959, was modified by an office memorandum dated 7.2.1986, issued by the Government of India, Department of Personnel and Training (hereinafter referred to as, "the OM dated 7.2.1986"). The modification introduced through the OM dated 7.2.1986 was to redress a situation wherein, vacancies of one of the sources were kept (or remained) unfilled during the process of selection, and the unfilled vacancies, had to be filled up through "later" examinations or selections. For the determination of seniority, in the contingency wherein the process of recruitment resulted in filling the vacancies earmarked for the two sources of recruitment, the manner of determining inter se seniority between promotees and direct recruits, expressed in the OM dated 22.11.1959 remained unaltered. But where the vacancies could not be filled up, and unfilled vacancies had to be filled up "later" through a subsequent process of selection, the manner of determining inter se seniority between promotees and direct recruits, was modified.*

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28. *The following conclusions have been drawn by us from the O.M. dated 3.7.1986:*

28.1. *If adequate number of direct recruits (or promotees) do not become available in any particular year, "rotation of quotas" for the purpose of determining seniority, would stop after the available direct recruits and promotees are assigned their slots for the concerned recruitment year.*

28.2. *To the extent direct recruits were not available for the concerned recruitment year, the promotees would be bunched together at the bottom of the seniority list, below the last position upto which it was possible to determine seniority, on the basis of rotation of quotas. and vice versa.*

28.3. *The unfilled direct recruitment quota vacancies for a recruitment year, would be carried forward to the corresponding direct recruitment vacancies of the next year (and to subsequent years, where necessary). and vice versa. In this behalf, it is necessary to understand two distinct phrases used in the OM dated 3.7.1986. Firstly, the phrase "in that year" which connotes the recruitment year for which specific vacancies are earmarked. and secondly, the phrase "in the subsequent year", which connotes carried forward vacancies, filled in addition to, vacancies earmarked for a subsequent 17-11-2017 recruitment year.*

28.4. *The additional direct recruits selected, against the carried forward vacancies of the previous year, would be placed en-bloc below the last promotee. and vice versa.*

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29. *It is, therefore, apparent, that the position expressed in the O. Ms. dated 7.2.1986 and 3.7.1986, on the subject of inter se seniority between direct recruits and promotees, was absolutely identical. This is indeed how it was intended, because the OM dated 3.7.1986 was only meant to*

"consolidate" existing governmental instructions, on the subject of seniority.

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47. Of course, it was possible for the Department of Personnel and Training to "amend" or "modify" the earlier office memoranda, in the same manner as the OM dated 7.2.1986 had modified/amended the earlier OM dated 22.11.1959. A perusal of the OM dated 3.3.2008, however reveals, that it was not the intention of the Department of Personnel and Training to alter the manner of determining inter se seniority between promotees and direct recruits, as had been expressed in the OMs dated 7.2.1986 and 3.7.1986. The intention was only to "clarify" the earlier OM dated 3.7.1986 (which would implicitly include the OM dated 7.2.1986). The OM dated 3.3.2008 has clearly breached the parameters and the ingredients of a "clarification". Therefore, for all intents and purposes the OM dated 3.3.2008, must be deemed to be non-est to the extent that the same is in derogation of the earlier OMs dated 7.2.1986 and 3.7.1986. Having so concluded, it is natural to record, that as the position presently stands, the OMs dated 7.2.1986 and 3.7.1986 would have an overriding effect over the OM dated 3.3.2008 (to the extent of conflict between them). and the OM dated 3.3.2008 has to be ignored/omitted to the extent that the same is in derogation of the earlier OMs dated 7.2.1986 and 3.7.1986." (emphasis supplied)

44. As a consequence of the decision of the Supreme Court in *N.R. Parmar* (supra), the DOP&T issued the OM dated 04.03.2014 which reads as follows:

"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. UOI & 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 ab 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. 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.

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.” (emphasis supplied)

45. The OM dated 04.03.2014, pertinently, also seeks to make the principle laid down in the said OM effective from 27.11.2012, i.e. the date

on which the Supreme Court decided *N.R. Parmar* (supra). It also provided that “*The cases of seniority already settled with reference to the applicable interpretation of the term availability as contained in DOP&T OM dated 07.02.1986/ 03/07/1986 may not be re-opened*”. Thus, the cases of seniority already settled were not to be re-opened.

46. The administrative wisdom contained in, and reflected in all the aforesaid OMs is that the settled seniority positions should not be unsettled whenever the principles for determination of seniority – be it *inter se* seniority between Direct Recruits and Promotees, or be it the fixation of *inter se* seniority between Promotees drawn from different channels, undergoes a change. This administrative wisdom is also in consonance with the well-settled legal position that settled seniority should not be unsettled on a later date.

47. By way of illustration, we may refer to a few other instances where the DOP&T while issuing OMs – dealing with aspects which would have a bearing on the fixation of *inter se* seniority, expressly preserved the pre-existing seniority position, and did not unsettle the same:

(i) The Ministry of Home Affairs issued the office memorandum No.9/22/68–Estt.(D) dated 06.02.1969 on the subject: “*Preservation of inter se seniority of the staff rendered surplus and redeployed on different occasions but in the same office*”. This OM specifically stipulated in paragraph 3 that “*These orders will take effect from the 25th February, 1966, the date of issue of the Scheme of re-deployment of surplus staff.*”

Promotions/ confirmations, if any, already made will, not however, be affected.”.

(ii) The Ministry of Home Affairs, Department of Personnel & Administrative Reforms issued OM No.28011/6/76-Estt.(D) dated 24.06.1978 on the subject “*Starting point in the recruitment roster for the purpose of seniority – procedure regarding*”. This OM also contained a similar stipulation with regard to its enforceability prospectively, such that the recruitment roster already maintained/ started were not to be reviewed on the basis of these instructions. Paragraph 4 of the office memorandum reads as follows:

“4. These instructions shall come into force with effect from the date of issue of this Office Memorandum and recruitment rosters already maintained/started need not be reviewed on the basis of the above instructions. However, where the persons concerned have been approved for appointment but the Recruitment roster has not been started this may be started in the light of the instructions.”

(iii) On 04.11.1992, the DOP&T issued an office memorandum No.2001/5/90/Estt.D dated 04.11.1992 on the subject “*Delinking seniority from confirmation*”. This OM also contained a similar stipulation that seniority already determined in accordance with the existing principles on the date of issue of the said orders would not be re-opened even if in some cases seniority has already been challenged, or is in dispute, and that in such cases the seniority would continue to be determined on the basis of the principles already existing prior to the date of issue of the said OM. Paragraph 4 of the said OM dated 04.11.1992 reads as follows:

“4. These orders shall take effect from the date of issue of this Office Memorandum. Seniority already determined according to the existing principles on the date of issue of these orders will not be reopened even if in some cases seniority has already been challenged or is in dispute and it will continue to be determined on the basis of the principles already existing prior to the date of issue of these orders.”

(iv) OM No.20011/1/2000-Estt.D was issued by the DOP&T on 27.03.2001 in consequence of the judgment of the Supreme Court in ***S.I. Rooplal & Others Vs. Lt. Governor through Chief Secretary, Delhi***, JT 1999 (9) SC 597, decided on 14.12.1999. The said OM was issued on the subject “*Seniority of persons absorbed after being on deputation*”. By this OM, the DOP&T implemented the decision of the Supreme Court in ***S.I. Rooplal*** (supra). Pertinently, even though the judgment in ***S.I. Rooplal*** (supra) did not specifically state that its decision would operate only prospectively, the OM made the instructions contained therein effective from the date of the judgment, i.e. 14.12.1999. The relevant extract from the said OM reads as follows:

“2. The Supreme Court has in its judgment dated December 14, 1999 in the case of Shri. S.I. Rooplal & Others Vs. Lt. Governor through Chief Secretary, Delhi, JT 1999 (9)SC 597 has held that the words “whichever is later” occurring in the Office Memorandum dated May 29, 1986 and mentioned above are violative of Articles 14 and 16 of the Constitution and, hence, those words have been quashed from that Memorandum. The implications of the above ruling of the Supreme Court have been examined and it has been decided to substitute the term “whichever is later” occurring in the Office Memorandum dated May 29, 1986 by the term “whichever is earlier”.

3. It is also clarified that for the purpose of determining the equivalent grade in the parent department mentioned in the

Office Memorandum dated May 29, 1986, the criteria contained in this Department Office Memorandum No. 14017/27/75- Estt.D)(Pt.) dated March 7, 1984 (copy enclosed), which lays down the criteria for determining analogous posts, may be followed.

4. These instructions shall take effect from the December 14, 1999 which is the date of the judgment of the Supreme Court referred to above. ” (emphasis supplied)

(v) The DOP&T issued OM vide F.No.35034/7/97/Estt (D) dated 08.02.2002 on the subject “*Procedure to be observed by Departmental Promotion Committees (DPCs) – No supersession in ‘selection’ promotion – Revised Guidelines regarding*”. Even this office memorandum stipulated that “*the instructions contained in this office memorandum shall come into force from the date of its issue*”, thereby meaning that the settled position in relation to the procedure to be adopted by the DPCs would not be unsettled.

48. We may now refer to only a couple of the decisions of the Supreme Court, wherein it has been categorically held that in service matters, an employee’s position in the seniority list after having been settled, should not be reopened after a lapse of many years. In ***Malcome Lawrence Cecil D’Souza vs. Union of India***, (1976) 1 SCC 599, the Supreme Court held in para 9 as under:-

“9. Although security of service cannot be used as a shield against administrative action for lapse of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at

the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time.” (emphasis supplied)

49. It would also be relevant to notice that the Supreme Court in the case of *H.S. Vankani & Ors. Vs. State of Gujarat & Ors.*, (2010) 4 SCC 301, held in para 25 as under:-

“38. Seniority is a civil right which has an important and vital role to play in one's service career. Future promotion of a government servant depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum-seniority, etc. Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instils confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility among the government servants and the enthusiasm to do quality work might be lost. Such a situation may drive the parties to approach the administration for resolution of that acrimonious and poignant situation, which may consume a lot of time and energy. The decision either way may drive the parties to litigative wilderness to the advantage of legal professionals both private and government, driving the parties to acute penury. It is well known that the salary they earn, may not match the litigation expenses and professional fees and may at times drive the parties to other sources of money-making, including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further, it also consumes a lot of judicial time from the lowest court to the highest resulting in

constant bitterness among the parties at the cost of sound administration affecting public interest.

39. Courts are repeating the ratio that the seniority once settled, shall not be unsettled but the men in power often violate that ratio for extraneous reasons, which, at times calls for departmental action. Legal principles have been reiterated by this Court in *Union of India v. S.K. Goel* [(2007) 14 SCC 641 : (2009) 1 SCC (L&S) 873] , *T.R. Kapoor v. State of Haryana* [(1989) 4 SCC 71 : 1989 SCC (L&S) 636 : (1989) 11 ATC 844] and *Bimlesh Tanwar v. State of Haryana* [(2003) 5 SCC 604 : 2003 SCC (L&S) 737] . In view of the settled law the decisions cited by the appellants in *G.P. Doval case* [(1984) 4 SCC 329 : 1984 SCC (L&S) 767] , *Prabhakar case* [(1976) 2 SCC 890 : 1976 SCC (L&S) 367] , *G. Deendayalan* [(1997) 2 SCC 638 : 1997 SCC (L&S) 749] and *R.S. Ajara* [(1997) 3 SCC 641 : 1997 SCC (L&S) 851] are not applicable to the facts of the case.” (emphasis supplied)

50. Then how should we understand the observations made by the Supreme Court in ***N.R. Parmar*** (supra) qua the O.M. dated 03.03.2008? According to the respondents, the observations made by the Supreme Court— as extracted above, tantamount to complete effacement and nullification of the O.M. dated 03.03.2008 *ab initio*. They state that the law declared by the Supreme Court is a declaration of the law as it has always been, and is not only prospective, unless specifically so stated by the Supreme Court. At this stage, we may remind ourselves of the well-settled principle that decisions of Courts are not to be read as Statutes. In ***Union of India & Others Vs. Dhanwanti Devi & Others***, (1996) 6 SCC 44, while dealing with the issue as to whether the earlier decision of the Supreme Court in ***Union of India Vs. Hari Krishan Khosla***, (1993) Supp. 2 SCC 149, constitutes a binding

precedent or not, the Supreme Court, inter alia, observed in paragraph 10 that:

“10. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent technique in the use of precedents.”

51. In **Kesar Devi Vs. Union of India & Others**, (2003) 7 SCC 427, reference was made to the observations made by the Supreme Court in **Attorney General for India Vs. Amratlal Prajivandas**, (1994) 5 SCC 54, in the context of the provisions of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA). In that context, the Supreme Court observed in paragraph 12:

“12. The judgment of a court is not to be interpreted like a statute where every word, as far as possible, has to be given a literal meaning and no word is to be ignored. The observations made have to be understood in the context of the facts and contentions raised.”

52. In **Union of India & Another Vs. Major Bahadur Singh**, (2006) 1 SCC 368, the respondent placed reliance on the earlier decision of the Supreme Court in **U.P. Jal Nigam Vs. Prabhat Chandra Jain**, (1996) 2 SCC 363 – which dealt with the issue of communication of the Annual Confidential Report which downgraded the employee vis-à-vis his grading in earlier years. The Supreme Court observed that **U.P. Jal Nigam** (supra) has no universal application and that the said judgment was intended to be meant only for the employees of the U.P. Jal Nigam. In this context, the Supreme Court observed in paragraphs 9 to 12 as follows:

“9. The courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. **Observations of the courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of the courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define.** Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* [1951 AC 737 : (1951) 2 All ER 1 (HL)] Lord MacDermott observed: (All ER p. 14 C-D)

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

10. In *Home Office v. Dorset Yacht Co.* [(1970) 2 All ER 294 : 1970 AC 1004 : (1970) 2 WLR 1140 (HL)] Lord Reid said: (All ER p. 297g-h)

“Lord Atkin's speech ... is not to be treated as if it were a statutory definition. **It will require qualification in new circumstances.**”

Megarry, J. in *Shepherd Homes Ltd. v. Sandham* (No. 2) [(1971) 1 WLR 1062 : (1971) 2 All ER 1267] observed: (All ER p. 1274d-e) “One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament;” and, in *Herrington v. British Railways Board* [(1972) 2 WLR 537 : (1972) 1 All ER 749 : 1972 AC 877 (HL)] Lord Morris said: (All ER p. 761c)

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

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

12. *The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT [AIR 1962 SC 680], AIR p. 688, para 19)*

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

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

53. In **C. Balachandran & Others Vs. State of Kerala & Others**, (2009) 3 SCC 179, the plea of the appellant to seek regularization in service, by placing reliance on the earlier decision of the Supreme Court in **Jacob M.**

Puthuparambil Vs. Kerala Water Authority, (1991) 1 SCC 28, was rejected by the learned Single Judge of the Kerala High Court by, inter alia, observing:

“9. Since the petitioners were not in service on that date, the claim made by them that they are entitled to regularisation in view of *Jacob* case [(1991) 1 SCC 28 : 1991 SCC (L&S) 25 : (1991) 15 ATC 697] cannot be sustained. Though other contentions also have been raised by the counsel for the petitioners, I do not think I should examine the merits of those contentions since in my view the petitioners are not entitled to the benefit of the judgment of the Supreme Court. ***Unless the petitioners come within the purview of that judgment, which is the Magna Carta of the workers of the Kerala Water Authority appointed prior to the extension of the provisions of the Public Service Commission (Consultation) Regulations to the Kerala Water Authority, any other contention will not be of any avail.***” (emphasis supplied)

54. The appeal preferred by the Division Bench of the same High Court also failed. The Supreme Court examined its decision in ***Jacob M. Puthuparambil*** (supra), and in that context, observed:

“15. ***The judgment rendered by this Court must be read in its entirety. It should not be read as a provision of a statute. This Court took into consideration the constitutional scheme to opine that those who are in job should not be thrown out. The aforementioned observations, therefore, must be borne in mind while construing clauses (2) and (3) of the operative part of the judgment of this Court. Jacob [(1991) 1 SCC 28 : 1991 SCC (L&S) 25 : (1991) 15 ATC 697] did not and in fact had no occasion to take into consideration the cases of the daily wagers appointed against a particular project and whose services had been terminated after the project had come to an end.***” (emphasis supplied)

55. From the aforesaid decisions, it emerges that the earlier decisions of the Supreme Court should be construed in the context of the facts and circumstances in which they were rendered, and observations made in a judgment should not be construed as a Statute. If the Supreme Court had no occasion to pronounce its view on a legal issue-since the issue did not arise for its consideration in the particular fact situation dealt with by it, the judgment may not constitute a binding precedent in respect of the legal issue not arising, and not considered by the Supreme Court.

56. In *N.R. Parmar* (supra), the counsel for the rival parties conceded and agreed that the dispute regarding seniority *inter se* the Promotees and Direct Recruits was liable to be determined by application of the Office Memoranda dated 07.02.1986 & 03.07.1986 read with clarificatory memoranda and office notes. Thus, it appears that no argument was raised before the Supreme Court so as to defend the validity of the OM dated 03.03.2008, or to save its application till the date of the judgment so as not to disturb settled seniority.

57. No doubt, the pronouncement made by the Supreme Court in relation to the OM dated 03.03.2008 is final and binding, and the said OM, therefore, has to be treated as *non est* by all authorities and Courts. However, it appears that on account of the fact that there was no submissions advanced before the Supreme Court by any of the parties in defence of the said OM dated 03.03.2008, it did not fall for consideration of the Supreme Court as to how the cases in which the seniority had been fixed and settled by application of the OM dated 03.03.2008 - between the date of issuance of the said OM, and the date of the decision of the Supreme Court in *N.R.*

Parmar (supra) (i.e. 27.11.2012), should be dealt with. Had the said issue been raised and considered by the Supreme Court, the Supreme Court may have either observed that all seniority lists drawn in pursuance of the OM dated 03.03.2008 should be reviewed in the light of the earlier OMs dated 07.02.1986 and 03.07.1986, or, the Supreme Court may have invoked the well-settled legal principle – that settled seniority should not be disturbed or unsettled on account of change in the rule position governing seniority, and preserved the finalized seniority positions even if drawn by application of the O.M. dated 03.03.2008.

58. No doubt, the Supreme Court has held that the OM dated 03.03.2008 has to be deemed to be *non-est* to the extent the same was in derogation of the earlier OMs dated 07.02.1986 and 03.07.1986. However, it is equally pertinent to note that the Supreme Court did not direct the re-opening of settled seniority lists drawn upon application of the OM dated 03.03.2008, and unsettling of the already settled Seniority Lists which may have been prepared in a span of over four and eight months, i.e. between 03.03.2008 and 27.11.2012 – when the decision in **N.R. Parmar** (supra) was rendered.

59. As we have already observed, the administrative wisdom has always been to preserve the settled seniority whenever there has been a change in the rule position/ applicable principle, and the changed rule/ principle that affects seniority is invariably made prospective in its operation. This administrative wisdom is in consonance with the well-settled legal principle that settled seniority should not be allowed to be unsettled. Since the decision of the Supreme Court in **N.R. Parmar** (supra) is silent on the aforesaid aspect, in our considered view, the reasonable manner of

application of the said decision – which would advance the cause of justice, would be to treat the OM dated 03.03.2008 as nullified/ quashed from and on the date of the said decision, i.e. 27.11.2012, and to preserve the settled seniority position drawn up by application of the said OM dated 03.03.2008 till the date of the decision in *N.R. Parmar* (supra).

60. Despite the judgment in *N.R. Parmar* (supra), the existence and operation of O.M. dated 03.03.2008, between 03.03.2008 and 27.11.2012 remains a historical fact, and the said O.M. must have impacted the seniority positions and service profiles of numerous civil servants, like the petitioner and respondent No.5. The fact cannot be wished away, that during the period of its operation, i.e. between 03.03.1988 and 27.11.2012 several seniority lists would have been drawn up in numerous departments/ Ministries of the Central Government, and all those organizations which follow the OMs issued by the DOP&T. The fact cannot be wished away, that employees would have acted and conducted themselves, and made their choices and exercised their options, keeping in view the existing rule/ principle position as reflected in the OM dated 03.03.2008. It cannot be ignored that such like persons – of whom the petitioner is an example, would be put to tremendous prejudice for no fault of theirs. If the OM dated 03.03.2008, by virtue of a legal fiction, is treated as *non est ab initio* (Pertinently, the Supreme Court does not say that the O.M. dated 03.03.2008 be treated as *non est ab initio*), i.e. to have never existed, persons such as the petitioner would be left high and dry for absolutely no fault of theirs. Pertinently, when the OM dated 03.03.2008 was applied to determine the seniority of the petitioner vis-à-vis the subsequent direct recruits, including

respondent No.5, they did not assail the seniority lists so drawn up by challenging the validity of the OM dated 03.03.2008. Thus, the seniority position declared in respect of the petitioner by placing reliance on OM dated 03.03.2008 remained unquestioned and unchallenged. The seniority lists so drawn up were not provisional, and had attained finality and were completely settled.

61. To literally construe the observations made by the Supreme Court in *N.R. Parmar* (supra) vis-à-vis the O.M. dated 03.03.2008, would lead to infraction of the settled position in law - that settled seniority should not be unsettled on account of a change in the rule position/ applicable principle. That would lead to unsettling of seniority positions of hundreds, if not thousands, of employees engaged in Central Services all over the country, which would give rise to a spate of avoidable litigations.

62. During the course of hearing, we had enquired from Mr. Narula whether post the decision of the Supreme Court in *N.R. Parmar* (supra), the Central Government had undertaken a general exercise of re-drawing the seniority lists by ignoring the seniority lists which may have been drawn in terms of the OM dated 03.03.2008 in all services and departments of the Central Government. Mr. Narula could not confirm that the Government of India had taken a general decision to revise all such seniority lists which had been drawn on the basis of the OM dated 03.03.2008 between the period 03.03.2008 and the date of the decision of the Supreme Court in *N.R. Parmar* (supra), i.e. 27.11.2012.

63. Pertinently, even though the decision in **N.R. Parmar** (supra) does not state that the said decision would be applicable only from the date on which it was rendered, the OM dated 04.03.2014 states that “*principles for determination of inter se seniority of direct recruits and promotees*” which are contained in the OMs dated 07.02.1986 / 03.07.1986, “*would be effective from 27.11.2012, the date of the Supreme Court judgment in Civil Appeal No. 7514-7515/2005 in the case of N.R. Parmar Vs. UOI & Others*”. Thus, even as per the OM dated 04.03.2014, the decision in **N.R. Parmar** (supra) was sought to be given effect to from the date of the said decision, i.e. 27.11.2012. The consequence of the application of the OM dated 04.03.2014, in our view, is that the seniority positions as settled up to the date of decision of **N.R. Parmar** (supra), were treated as final.

64. The facts of the present case show that a mechanical and literal application of **N.R. Parmar** (supra) to the same, would bring about a glaringly unjust result. The Petitioner had applied for the post of DLC against the direct recruitment vacancy in the year 2007. In the Direct recruitment process, the Petitioner had obtained the highest marks and was thus, admittedly, found to be more meritorious than respondent No.5. Before the result thereof could finally be declared and any offer of appointment made to any candidate, the petitioner, by virtue of her performance and seniority as an ALC, had been selected for promotion to the post of DLC against the vacancy of 2009 and had joined the post as a promotee w.e.f. 25.05.2009. It is also an undisputed fact that the result of the direct recruitment process initiated in the year 2007, relating to the direct recruitment quota vacancies of the year 2007, was ultimately declared on

04.03.2010 and Respondent No.5 got selected – though ranked lower in merit than the petitioner, because the petitioner had withdrawn her candidature by then on account of her promotion to the said post of DLC on 25.05.2009. Respondent No.5 had joined the said post of DLC as a direct recruit on 07.10.2010. On 25.05.2009, as well as on 07.10.2010 – when the Petitioner and Respondent No.5 had respectively joined the post of DLC, the OM – based on which the *inter se* seniority of direct recruits and promotees was determined, was that of 03.03.2008, and as per this OM a direct recruit like Respondent No.5 was entitled to get seniority only from the date of joining i.e. 07.10.2010.

65. Once the *inter se* seniority as fixed by Respondents No.1 to 4 in the year 2010 – on the basis of the prevailing OM for fixation of the *inter se* seniority had been accepted by all the concerned parties, including Respondent No.5, Respondents could not be permitted to topple the said seniority list by placing reliance on a decision of the Supreme Court in ***N.R. Parmar*** (supra). In our considered view, to do so would be to do grave injustice to the petitioner upon a misinterpretation and misunderstanding of the said decision of the Supreme Court.

66. There is no dispute about the fact that all the parties understood and accepted the position that the seniority of direct recruits had to be counted from the date of actual appointment – at the point of time when the petitioner was promoted on 25.05.2009 and respondent No.5 was appointed as a Direct Recruit on 07.10.2010, and that is perhaps the reason why neither Respondent No.5, nor any other effected party submitted any representation or objection to any of the three Seniority Lists dated 25.10.2010 and

15.09.2011, wherein the petitioner was shown senior to respondent No.5 in the cadre of DLC. It is also an admitted fact that no litigation had been initiated at the behest of any of the effected parties challenging the Seniority Lists circulated in the year 2010/2011.

67. In the light of the O.M. dated 03.03.2008, there was no purpose for the petitioner to continue to seek her claim against the direct recruitment vacancy for the year 2007 as, even if she had eventually got the said post, it would not have made her seniority position any better in view of the then prevailing principle/ rule for determination of inter se seniority of direct recruits and promotees. Thus, the decision taken by the petitioner to forego her claim in respect of the direct recruitment vacancy of the year 2007 cannot be used against her.

68. We may also take note of the Division Bench decision of this Court in ***Prakash Singh v. Union of India & Anr.***, 231 (2016) DLT 641 (DB) . In this case, the petitioner Prakash Singh belatedly sought to challenge the settled seniority position and to seek re-fixation of seniority and consequential promotion by placing reliance on ***N.R. Parmar*** (supra). He claimed that ***N.R. Parmar*** (supra) gave him a fresh cause of action. This Court held that the original application preferred by the petitioner was barred by limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985. By placing reliance on ***Mafatlal Industries Ltd. v. Union of India & Ors.***, (1997) 5 SCC 536, this Court rejected the plea of the petitioner that the decision in ***N.R. Parmar*** (supra) gave him a fresh cause of action and a new lease of life to assail the settled seniority list.

69. In the present case, the respondent nos.1 to 4 on their own unsettled their seniority list drawn up in the year 2010, which was reiterated in 2011 and 2014 and, consequently, the petitioner was left to fend for herself. In our view, the said action of respondent nos.1 to 4 was completely unjustified. If respondent no.5 had any grievance, the respondent department should not have taken sides and should have left it to respondent no.5 to approach the tribunal with his grievance with regard to fixation of the seniority, vis-à-vis the petitioner. In that situation, respondent no.5 would have had to justify his belated challenge to the seniority lists, which stood settled since 2010. However, by itself stepping into the arena, the respondent department has deprived the petitioner of her defence - which would have been available to her before the tribunal, if respondent no.5 had been driven to file the O.A. to seek his claim for seniority over the petitioner in the cadre of DLC. Such conduct of the department in taking sides in a seniority dispute between the employees has been adversely commented upon by the Supreme Court in ***S.I. Rooplal*** (supra) in para 24. The same read as under:

“24. Before concluding, we are constrained to observe that the role played by the respondents in this litigation is far from satisfactory. In our opinion, after laying down appropriate rules governing the service conditions of its employees, a State should only play the role of an impartial employer in the inter-se dispute between its employees. If any such dispute arises, the State should apply the rules laid down by it fairly. Still if the matter is dragged to a judicial forum, the State should confine its role to that of an amicus curiae by assisting the judicial forum to a correct decision. Once a decision is rendered by a judicial forum, thereafter the State should not further involve itself in litigation. The matter thereafter should be left to the

parties concerned to agitate further, if they so desire. When a State, after the judicial forum delivers a judgment, files review petition, appeal etc. it gives an impression that it is espousing the cause of a particular group of employees against another group of its own employees, unless of course there are compelling reasons to resort to such further proceedings. In the instant case, we feel the respondent has taken more than necessary interest which is uncalled for. This act of the State has only resulted in waste of time and money of all concerned”.

70. The principle, that the law declared by the Supreme Court always has retrospective effect, and is applicable to all cases – irrespective of the stage of their pendency (because it is assumed that what is declared by the Supreme Court was, in fact, the law from the very inception), would have to be harmonized with the equally well-established principle that settled seniority in a service, should not be allowed to be unsettled. In the present case, the *inter se* seniority of the parties was not at all under challenge right from 2010. No dispute relating to inter se seniority was pending when the decision in **N.R. Parmar** (supra) was rendered. As there was no pending challenge to the Seniority List, in our view the decision of the Supreme Court in the case of **N.R. Parmar** (supra), could not be made applicable to the present case. As we have already observed, the O.M. dated 04.03.2014, in fact, shows that the application of the decision in **N.R. Parmar** (supra) was made applicable prospectively by the government. We have considered the judgments relied upon by the learned counsel for the respondents laying down the concept of retrospective overruling by courts. That proposition is not disputed by any of the parties, and hence we are not making any reference to the same. In our view, in the facts and circumstances of this case, the said principle does not come to the aid of respondent No.5.

71. We have also considered the decision of this Court in the case of *Union of India & Anr. v. Sudhanshu Kumar Khare & Ors.* in W.P.(C) No. 7370/2010 on which reliance has been placed by the learned counsel for the Respondents. We, however, find that in the above captioned case the initial Seniority List had remained under challenge when the O.M. dated 04.03.2014 – explaining the effect of the declaration in *N.R. Parmar* (supra) case, was issued and it was in these circumstances that this Court had directed to rotate the quota and refix the *inter se* seniority by considering the effect of the clarification issued by way of O.M. dated 04.03.2014. In the present case, the earlier Seniority Lists issued on 25.10.2010 and 15.09.2011 had been accepted by all the parties, including Respondent No.5, and had attained finality when the O.M dated 04.03.2014 was issued. Therefore, in our view the aforesaid decision of this Court is of no avail to the Respondents.

72. Though there is no doubt that after the issuance of O.M. dated 04.03.2014, unless the Statutory Rules provided otherwise, the *inter se* seniority of direct recruits and promotees in future cases has to be fixed with reference to date of initiation of the process of recruitment, but the same cannot be stretched to such an extent so as to permit the employer department to reopen the already settled Seniority Lists, which were not under challenge in any proceedings whatsoever. In our view, to hold otherwise would lead to administrative chaos, as by using the said methodology the respondents and, in fact, any employer across the country, governed by the DOP&Ts O.M would be free to reopen the seniority of employees, which may have been settled years ago. This could not have

been the intent of the decision of the Supreme Court in *N.R. Parmar* (supra), or the DOP&Ts O.M dated 04.03.2014.

73. In these circumstances, we are of the considered view that the decision in *N.R. Parmar* (supra) cannot be used by the respondents to unsettle the settled seniority position of the petitioner in the cadre of the DLC.

74. We may also refer to Rule 4 (1) and Rule 11 (1) & (2) of the Indian Legal Service, 1957, based on which Ms. Singh has contended that a person can become a member of Indian Legal Services only from the date he is appointed on a duty post, which is to be reckoned as a starting point for determination of seniority in terms of the ILS Rules. The said Rules read as under:-

“Rule 4 (1) The following persons shall be members of the Service with effect from the date indicated against them:-

a) Persons appointed to the Service at the commencement of these rules under rule 5, from the date of such commencement;

b) Persons appointed to the Service after such commencement but before the commencement of the Central Legal Service (Second Amendment) Rules, 1963, from the date they were so appointed;

c) Persons other than those referred to in clauses (a) and (b) holding duty posts t the commencement of the Central Legal Service (Second Amendment) Rules, 1963, from the date of such commencement; and

d) Persons appointed to duty posts after the commencement of the Central Legal Service (Second Amendment) Rules, 1963 from the date they are so appointed..

Rule 11(1) & (2)

(1) A list of members of the service shall be maintained separately for Legislative Department and each of the three cadres in the Department of Legal Affairs as indicated in the 'First Schedule' to these rules, in the order of their seniority

(2) The seniority of members of the service in each Department shall be determined in accordance with the general instructions issued by the Central Government in that behalf, from time to time."

75. We are of the view that Rule 4(1) of the ILS Rules on which reliance has been placed by Ms. Singh, speaks only of the entry point to the service and does not at deal with the fact situation in the present case. Both the petitioner and respondent no.5 having joined the Legal Service since 2003 as ALC, were admittedly members of the service then and therefore, in our view, Rule 4(1) can be of no avail to determine the question arising in the present case. The *inter se* seniority of the parties in respect of the next higher post of DLC to which they have been appointed through different routes-the petitioner by way of promotion and respondent no.5 by way of direct recruitment, cannot at all be determined with reference to the date of their initial appointment to the service.

76. Turning to the second issue which is actually interconnected with the first issue itself, i.e. whether Respondent nos. 1 to 4 were justified in revising the already settled seniority list on the basis of a representation by Respondent no.5, the foremost factor to be considered is that there is no denial of the fact that Respondent no.5, at no point of time prior to 2014, had challenged the settled seniority position wherein he was shown below the Petitioner. The Respondent no.5 was always aware that even in the

selection process for direct recruitment (in respect of vacancies for the year 2007), the Petitioner was rated more meritorious than him, and had been placed at Sl. No.1 on the selection list, whereas Respondent no.5 was only a reserve list candidate. We cannot also lose sight of the fact that, in view of well settled legal principle that an employee should not be permitted to challenge an already settled seniority position after an inordinate delay, if respondent no.5 had initiated legal proceedings to challenge the seniority list in 2015, he would have had to cross the hurdle of delay and laches, which factor has been completely ignored by the Respondent nos. 1 to 4.

77. Thus, when we look at the facts of the present case we find that the *inter se* seniority of the parties in the DLC Grade III stood crystalised in October, 2010. Based on this determination, the seniority list was published on 15.09.2011 and thereafter once again published on 07.03.2014 (i.e. much after the decision of the Supreme Court in **N.R. Parmar** (supra) on 27.11.2012) and, in light of these facts, we are of the view that the respondents were not at all justified in unsettling the already settled seniority, especially in light of the fact that none chose to challenge the same for more than 4 years. The determination of seniority has to be consistent with the principles of equality and fairness, and must conform to Article 14 and 16 of the Constitution of India. In our view, in the facts of the present case, it would be most unjust and unfair to tinker with the already settled seniority position after the same had attained finality, to the detriment of the petitioner

78. For all these reasons mentioned above, we set aside the impugned order of the Tribunal. The writ petition of the petitioner is allowed and that

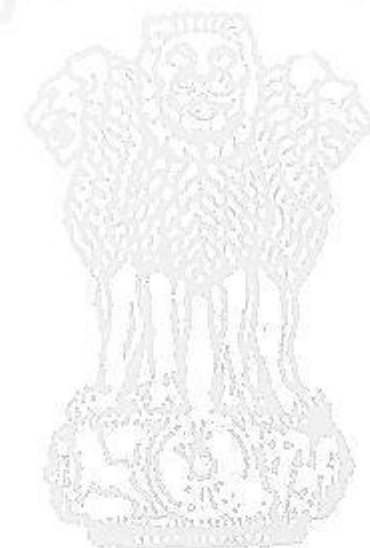
of the respondent No.5 is dismissed with no order as to cost. Accordingly the Seniority List dated 27.02.2015 is set aside and respondents No. 1 to 4 are directed to restore the *inter se* seniority of the parties as per the Seniority Lists dated 15.09.2011 and 07.03.2014 and take all consequential steps.

REKHA PALLI, J

VIPIN SANGHI, J

JANUARY 22 , 2018

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