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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of decision: 28.05.2024*

+ W.P.(C) 7674/2024

+ W.P.(C) 7772/2024

+ W.P.(C) 7799/2024

+ W.P.(C) 7939/2024

RAVI KUMAR & ORS.

..... Petitioners

Through: Mr.Ankur Chibber & Mr.Vishal
Chanda, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Sudhir Naagar, Mr.Manohar
Naagar, Mr.Piyush Aggarwal & Ms.Sonali Bohra,
Advs. for respondent nos.4 & 5 in W.P.(C)
7674/2024 and respondent nos.4 to 6 in W.P.(C)
7799/2024.

Dr.B.Ramaswamy, CGSC.

Mr.Aditya Kashyap, Adv.

Ms.Sriparna Chatterjee & Ms.Soumitra Chatterjee,
Advs.**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE SAURABH BANERJEE****REKHA PALLI, J (ORAL)****CM APPL. 31954/2024 & CM APPL. 31955/2024 in W.P.(C) 7674/2024****CM APPL. 32233/2024 & CM APPL. 32234/2024 in W.P.(C) 7772/2024****CM APPL. 32322/2024 & CM APPL. 32323/2024 in W.P.(C) 7799/2024****CM APPL. 32744/2024 & CM APPL. 32745/2024 in W.P.(C) 7939/2024**

1. Exemptions allowed, subject to all just exceptions.
2. The applications stand disposed of.



CM APPL. 32217/2024 in W.P.(C) 7674/2024
CM APPL. 32235/2024 in W.P.(C) 7772/2024
CM APPL. 32324/2024 in W.P.(C) 7799/2024
CM APPL. 32746/2024 in W.P.(C) 7939/2024

3. These are applications filed by the petitioners seeking to place on record lengthy synopsis and lists of dates.
4. The applications are, for the reasons stated therein, allowed and the synopsis and the lists of dates filed along with the petitions are taken on record.
5. The applications stand disposed of.

W.P.(C) 7674/2024, CM APPL. 31952/2024 (directions) & CM APPL.31953/2024 (stay)

W.P.(C) 7772/2024 & CM APPL. 32232/2024 (stay)

W.P.(C) 7799/2024, CM APPL. 32320/2024 (directions) & CM APPL.32321/2024 (stay)

W.P.(C) 7939/2024, CM APPL. 32742/2024 (directions) & CM APPL.32743/2024 (stay)

6. The present batch of petitions under Articles 226 & 227 of the Constitution of India seek to assail the order dated 02.05.2024 passed by the learned Central Administrative Tribunal (Tribunal) in a batch of original applications (OA), including OA No.939/2023. Vide the impugned order, the learned Tribunal has allowed the OAs filed by the private respondents by setting aside the modified seniority list dated 07.10.2022 and has directed the Union of India (UoI) to finalize and re-draw the seniority list of Inspectors in the Central Goods and Services Tax (CGST) and Custom Department in terms of the directions issued by the Apex Court in *K.*



Meghachandra Singh v. Ningam Siro, (2020) 5 SCC 689, as mandated under DoPT's Office Memorandums (OM) dated 13.08.2021 and 18.08.2021. The learned Tribunal has consequently directed that the Departmental Promotion Committee (DPC) for consideration of Inspectors for further promotions will be held only after drawing the revised seniority list in terms of these directions issued under the impugned order.

7. The brief factual matrix as is necessary for adjudication of the present petitions is that the petitioners are direct recruits having been appointed as Inspectors pursuant to the selection process initiated in February 2015 and joined service on different dates in the year 2016. It is the common case of the parties that on 15.03.2018, the *inter se* seniority of officials in the rank of Inspector, which comprises of direct recruits, promotees as also the Inter Commissionerate Transferees (ICT), was issued. The said list appears to have been issued on the basis of the decision of the Apex Court in ***Union of India v. N.R. Parmar, (2012) 13 SCC 340*** as also the DoPT's OM dated 04.03.2014, which was issued in furtherance of the decision of the Apex Court in ***N.R. Parmar (supra)***. The said seniority list was, however, assailed by a batch of Inspectors, who were falling under the category of ICTs by way of OA No.2955/2019, wherein they had also impleaded some directly recruited Inspectors as respondents. This OA was allowed by the learned Tribunal vide its order dated 13.10.2020, by holding that in view of the decision rendered by the Apex Court in ***K. Meghachandra (supra)*** on 19.11.2019, the principles laid down by the Apex Court in its earlier decision in ***N.R. Parmar (supra)*** would no longer be applicable. Consequently, the official respondents were directed to finalize the seniority list on the basis of the principles laid down in ***K Meghachandra (supra.)***



8. Being aggrieved, the direct recruits approached this Court by way of **W.P.(C) 3576/2021** titled *Yash Rattan & Ors. v. Union of India & Ors*, which writ petition came to be dismissed by a co-ordinate bench vide its detailed order dated 09.04.2021. While dismissing the writ petition, this Court observed that since the seniority list of 15.03.2018 had not attained finality when the decision in *K. Meghachandra (supra)* was rendered, the said seniority list was required to be re-drawn on the basis of the principles laid down by the Apex Court in *K. Meghachandra (supra)*. This decision was unsuccessfully assailed before the Apex Court, first by direct recruits by way of SLP (Civil) No.9519/2022 and then by the UoI by way of SLP (Civil) No. 11046/2022. Both these SLPs were dismissed in *limine* on 20.05.2022 and 12.07.2022 respectively. Consequently, after dismissal of these SLPs, the UoI, in purported compliance of this Court's order dated 09.04.2021, came up with a modified seniority list on 07.10.2022.

9. Some of the promotees as also the ICTs felt aggrieved with this seniority list as it was their case that the same had not been issued in accordance with the principles laid down in *K. Meghachandra (supra)*. In these circumstances, they approached the learned Tribunal by way of a batch of OAs, including OA No.939/2023, which have been allowed under the impugned order, by again directing the UoI to re-draw the seniority list strictly in accordance with the principles laid down in *K. Meghachandra (supra)*. However, taking note of the fact that the decision in *K. Meghachandra (supra)* has also been referred to a larger bench by the Apex Court in *Hariharan & Ors. v. Harsh Vardhan Singh Rao & Ors., 2022 SCC OnLine SC 1717*, the learned Tribunal has clarified that the revised seniority list which was required to be issued by UoI would remain subject



to the decision in *Hariharan & Ors. (supra)*. Being aggrieved, the petitioners who are direct recruits having been appointed as Inspectors in 2016, have approached this Court.

10. In support of the petition, Mr. Ankur Chibber, learned counsel for the petitioners vehemently contends that while passing the impugned order, the learned Tribunal has failed to appreciate that this Court's order dated 09.04.2021 in *Yash Rattan (supra)*, which was the basis for holding that the seniority list issued on 15.03.2018 has not been finalized, was not applicable to the facts of the present case. He submits that in *Yash Rattan (supra)*, while rejecting the challenge to the learned Tribunal's order dated 13.10.2020, this Court had categorically observed that the seniority list between the direct recruits and promotees was not a *lis* in the said matter, and therefore, the decision in *Yash Rattan (supra)* could not be made applicable to determine the *inter se* seniority of promotees and direct recruits. He, therefore, contends that the findings of this Court that the seniority list dated 15.03.2018 had not been finalized is not binding on the petitioners as their seniority stood crystalised before the judgment in *K. Meghachandra (supra)* was rendered and could not have been re-opened after the said decision.

11. Furthermore, even as per the decision in *Yash Rattan (supra)* the seniority list was to be re-drawn not only in terms of the decision of the Apex Court in *K. Meghachandra (supra)* but also in terms of the DoPT's OM's dated 13.08.2021 and 18.08.2021. By drawing our attention to the DoPT's OM dated 13.08.2021, he submits that the said OM also makes it clear that the case of direct recruits and promotees appointed during the period between 27.11.2012 i.e. the date when the decision in *N.R. Parmar*



(*supra*) was rendered and 19.11.2019, when the decision in **K. Meghachandra** (*supra*) was rendered, would have to be governed by the OM dated 04.03.2014, which clearly encapsulates the principles enshrined in **N.R. Parmar** (*supra*).

12. Further, he submits that the learned Tribunal has also failed to appreciate that the private respondents who were applicants in the OA, were not even a part of the modified seniority list issued on 07.10.2022 and therefore were precluded from laying any challenge thereto. He finally submits that since all these vital aspects have been lost sight of by this Court while deciding **Yash Rattan** (*supra*), the said decision ought to be treated as *per incuriam*. He therefore prays that this Court instead of following the decision in **Yash Rattan** (*supra*) may refer the question involved in the present matter to a larger bench.

13. On the other hand, learned counsel for the private respondents support the impugned order and submit that in the light of the categorical findings of this Court that the seniority list dated 15.03.2018 had not been finalized when the decision in **K. Meghachandra** (*supra*) was rendered by the Apex Court, the petitioners are estopped from urging that their seniority stood crystallized before the said date. He further, contends that the petitioners having unsuccessfully assailed the decision in **Yash Rattan** (*supra*) before the Apex Court and having taken no steps for over two years to challenge the finding of this Court that the seniority list dated 15.03.2018 had not attained finality, cannot now be permitted to urge that this Court should re-examine the issue decided in **Yash Rattan** (*supra*). They, therefore, pray that the writ petitions be dismissed.



14. Having considered the submissions of the learned counsel of the parties and perused the record, we are unable to agree with the learned counsel for the petitioners. Even though, the petitioners are correct in urging that they had joined service well before the date when the decision in **K. Meghachandra** (*supra*) was rendered, the fact remains that there is a categorical finding by a co-ordinate bench of this Court in **Yash Rattan** (*supra*) that the seniority list dated 15.03.2018, which included the names of the petitioners, had not been finalized when the decision in **K. Meghachandra** (*supra*) was rendered. For the sake of completeness, it would therefore be apposite to refer to the relevant findings in **Yash Rattan** (*supra*), which read as under:-

*“16. We have examined the rival contentions. It is a matter of fact that the seniority position in the present case was not finally settled when the judgment in the case of K. Meghachandra Singh (*supra*) was delivered by the Hon’ble Supreme Court on 13th November, 2019. (Emphasis Supplied) The impugned seniority list was issued on 15th March, 2018 and immediately thereafter, various representations were filed on behalf of the private respondents against the said seniority list. When no response was received on the said representations, the private respondents filed the OA before the CAT, challenging the said seniority list, from which the present petition arises. In fact, OA was also filed before the judgment in **K. Meghachandra Singh judgment** (*supra*) was delivered. Therefore, it is incorrect on the part of the petitioners to say that the seniority position was settled and therefore the same has to be protected in terms of the judgment in **K. Meghachandra Singh judgment** (*supra*). Accordingly, once the seniority list itself was subject matter of challenge before CAT, the law laid down in the case of **K. Meghachandra Singh** (*supra*) had to be applied. The following paragraphs from the judgment in*



K. Meghachandra Singh (*supra*) may be referred to:-

“37. When we carefully read the judgment in N.R.Parmar, it appears to us that the referred OMs (dated 7-2-1986 and 3-7-1986) were not properly construed in the judgment. Contrary to the eventual finding, the said two OMs had made it clear that seniority of the direct recruits be declared only from the date of appointment and not from the date of initiation of recruitment process. But surprisingly, the judgment while referring to the illustration given in the OM in fact overlooks the effect of the said illustration. According to us, the illustration extracted in N.R. Parmar itself, makes it clear that the vacancies which were intended for direct recruitment in a particular year (1986) which were filled in the next year (1987) could be taken into consideration only in the subsequent year’s seniority list but not in the seniority list of 1986. In fact, this was indicated in the two OMs dated 7-2-1986 and 3-7-1986 and that is why the Government issued the subsequent OM on 3-3-2008 by way of clarification of the two earlier OMs.

38. At this stage, we must also emphasise that the Court in N.R. Parmar need not have observed that the selected candidate cannot be blamed for administrative delay and the gap between the initiation of process and appointment. Such observation is fallacious inasmuch as none can be identified as being a selected candidate on the date when the process of recruitment had commenced. On that day, a body of persons aspiring to be appointed to the vacancy intended for direct recruits was not in existence. The persons who might respond to an advertisement cannot have any



service-related rights, not to talk of right to have their seniority counted from the date of the advertisement. In other words, only on completion of the process, the applicant morphs into a selected candidate and, therefore, unnecessary observation was made in N.R. Parmar to the effect that the selected candidate cannot be blamed for the administrative delay. In the same context, we may usefully refer to the ratio in Shankarsan Dash v. Union of India, where it was held that even upon empanelment, an appointee does not acquire any right.

39. The judgment in N.R. Parmar relating to the Central Government employees cannot in our opinion, automatically apply to the Manipur State Police Officers, governed by the MPS Rules, 1965. We also feel that N.R. Parmar had incorrectly distinguished the long-standing seniority determination principles, propounded in, inter alia, Jagdish Ch. Patnaik, Suraj Parkash Gupta v. State of J&K and Pawan Pratap Singh v. Reevan Singh. These three judgments and several others with like enunciation on the law for determination of seniority makes it abundantly clear that under service jurisprudence, seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre. In our considered opinion, the law on the issue is correctly declared in Jagdish Ch. Patnaik and consequently we disapprove the norms on assessment of inter se seniority, suggested in N.R. Parmar. Accordingly, the decision in N.R. Parmar is overruled. However, it is made clear that this decision will not affect the inter se seniority already based on N.R. Parmar and the same is protected. This decision will apply prospectively except where



seniority is to be fixed under the relevant rules from the date of vacancy/the date of advertisement.”

17. From a reading of the above passages, the dicta of the Hon'ble Supreme Court that emerges, can be summarized, as below:-

(i) OMs dated 07.02.1986 and 03.07.1986 were not properly construed in the **N.R. Parmar** (supra) judgment. The said OMs made it clear that seniority of direct recruits had to be fixed from the date of appointment and not from the date of initiation of recruitment process;

(ii) Persons aspiring to be appointed to a vacant post do not have any vested right. Only upon completion of the selection process, a candidate becomes a selected candidate and therefore, the finding in **N.R. Parmar** (supra) that the selected candidate cannot be blamed for administrative delay, was not correct;

(iii) **N.R. Parmar** (supra) has incorrectly distinguished the longstanding seniority determination principles propounded in the following cases:-

(a) **Jagdish Ch. Patnaik Vs. State of Orissa**, (1998) 4 SCC 456;

(b) **Suraj Prakash Gupta Vs. State of J&K**, (2000) 7 SCC 561; and,

(c) **Pawan Pratap Singh Vs. Reevan Singh**, (2011) 3 SCC 267

(iv) In service jurisprudence, seniority cannot be claimed from the date when the incumbent is yet to be borne in the cadre and therefore, norms on assessment of inter se seniority, suggested in **N.R. Parmar** (supra) case were disapproved;



(v) *Decision in N.R. Parmar (supra) case is overruled, however the decision will not affect the inter se seniority already based on N.R. Parmar (supra) case and the same is protected. Decision will apply prospectively.*

18. *Therefore, in our view CAT has correctly applied the dicta in **K. Meghachandra Singh** (supra) case in the present case and has proceeded to quash the seniority list to the extent it placed the petitioners above the private respondents. The fact that the CAT decision would impact the inter se seniority between the promotees and direct recruits (petitioners), is not the subject matter of the present petition, and therefore, need not be examined. It is also an admitted position that in the present case requisitions for the appointment of the petitioners were sent to SSC the recruiting authority on 11th February, 2015, after the private respondents had already joined the Delhi Commissionerate. Therefore, even in terms of OM dated 4 th March, 2014, the petitioners cannot be placed above the private respondents.”*

15. In the light of the aforesaid categorical findings recorded in **Yash Rattan** (supra) that the seniority of Inspectors had not been finalized when the decision in **K. Meghachandra** (supra) was rendered and was therefore required to be redrawn in accordance with the principles laid therein, we are of the view that the learned Tribunal was justified in directing the UoI to redraw the seniority list as per **K. Meghachandra** (supra). In fact, even if we were to accept the petitioners’ plea that in **Yash Rattan** (supra), this Court was not dealing with the *inter se* seniority of promotees and direct recruits, nothing much turns on the same. We find that the even though the Court was not specifically dealing with the *inter se* seniority of direct recruits and



promotees, the fact remains that the seniority list which was under consideration by the Court reflected the names of direct recruits, including the petitioners herein. Once, this Court had opined in *Yash Rattan (supra)* that the seniority list dated 15.03.2018 had not attained finality and was therefore required to be re-drawn as per *K. Meghachandra (supra)*, it is not open for the petitioners to urge that their seniority has to be fixed as per the earlier decision in *N.R.Parmar (supra)*.

16. Furthermore, the decision in *Yash Rattan (supra)*, whereunder the seniority list was directed to be re-drawn as as per *K. Meghachandra (supra)* has already attained finality, having been unsuccessfully assailed before the Apex Court, both by the petitioners as also the UoI. In these circumstances, we are unable to find any infirmity with the directions issued by the learned Tribunal for re-drawing the seniority list in accordance with the principles laid down in *K. Meghachandra (supra)*.

17. For the aforesaid reasons, the writ petitions along with the pending applications are, accordingly, dismissed in the aforesaid terms.

18. Needless to state, as already observed by the learned Tribunal, the revised seniority list to be drawn in terms of the impugned order will remain subject to the decision in *Hariharan (supra)*.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

MAY 28, 2024/kk