



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 18.03.2024

+ W.P. (C) 12135/2023 & CM APPL. 47696-97/2023 & CM
APPL.57874/2023

THE EMPLOYEES STATE INSURANCE
CORPORATION

..... Petitioner

Versus

ANIL KATYAL & ORS.

..... Respondents

+ W.P. (C) 14351/2023 & CM APPL. 56828-29/2023 & CM
APPL. 62129/2023

EMPLOYEES STATE INSURANCE CORPORATION Petitioner

Versus

RAJIV BAJAJ & ORS.

..... Respondents

+ W.P. (C) 14434/2023 & CM APPL. 57172/2023 & CM APPL.
62021/2023

EMPLOYEES STATE INSURANCE CORPORATION Petitioner

Versus

SHANTI MAHENDRAN & ORS.

..... Respondents

+ W.P. (C) 16798/2022 & CM APPL. 53078-80/2022, CM
APPL. 53457/2022 & CM APPL. 57929/2023

VIRENDER SINGH DAHIYA & ORS.

..... Petitioners



Versus

ANIL KATYAL & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. S.V. Raju, Additional Solicitor General with Mr. Zoheb Hossain, Mr. Vivek Gurnani, Advocate and Mr. Nishant Kumar, DD, ESIC (W.P.(C) 12135/2023)

Mr. Manish Kumar Saran with Mr. Satya Prakash Sharan and Ms. Ananya Tyagi, Advocates (W.P. (C) 14351/2023)

Mr. Satya Prakash Sharan, Advocate (W.P. (C) 14434/2023)

Mr. Naveen Kumar with Ms. Aprajita Bhardwaj, Mr. Shourajeet Chakravarty, Mr. Nitesh Bhandari, Ms. Stuti Bisht, Mr. Prabhat Kumar and Mr. Sudarshan, Advocates (W.P. (C) 16798/2022)

For the Respondents: Mr. Gautam Narayan with Mr. Prateek Dhanda and Mr. Sarthak Kaushik, Advocates for respondent Nos.1 to 8 (W.P. (C) 12135/2023 & W.P. (C) 16798/2022)

Mrs. Amrita Prakash, CGSC for UOI with Mr. Vishal Ashwani Mehta, Advocate (W.P. (C) 16798/2022)

Mr. Kishore Kumar Patel, Advocate. (W.P. (C) 14351/2023 & W.P. (C) 14434/2023)

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J.



1. Employees State Insurance Corporation – the petitioner in W.P. (C) 12135/2023, W.P.(C) 14351/2023 and W.P.(C) 14434/2023 is a Statutory Corporation under the Ministry of Labour and Employment, Govt. of India established under Section 3 of Employee State Insurance Act 1948 and is under the administrative control of the Ministry of Labour and Employment, Government of India.

2. The dispute in these petitions pertain to the seniority lists issued on 15.03.2016, 24.06.2016 and 08.11.2016 for the post of Social Security Officer/Branch Managers Grade – II/Superintendents in the Employee State Insurance Corporation (ESIC for short).

3. Private Respondents, the original Petitioners in O.A. 141 of 2017 and O.A. 1234 of 2022 before the Central Administrative Tribunal Principal Bench (hereinafter referred to as the Tribunal) were the departmental employees who had been promoted through Limited Departmental Competitive Examination impugned the seniority lists whereby the Direct Recruits were placed above them in the seniority lists. Petitioners in O.A. 235 of 2017 were direct recruits appointed under the Sportsperson category and claimed seniority to the other direct recruits.

4. In W.P.(C) 12135/2023, ESIC seeks quashing of judgment dated 30.08.2022, of the Tribunal in O.A. 141 of 2017, whereby the



seniority lists were quashed being contrary to the law laid down in *K. Meghachandra Singh & Ors. V. Ningam Siro & Ors. (2020) 5 SCC 689*.

5. In W.P.(C) 14351/2023 ESIC seeks quashing of judgment dated 20.04.2023, of the Tribunal in O.A. 235 of 2017 whereby following the judgment dated 30.08.2022 in O.A. 141 of 2017 (impugned in W.P. (C). 12135/2023), directions were issued to redraw the seniority list.

6. In W.P.(C) 14434/2023 ESIC seeks quashing of judgment dated 22.03.2023, of the Tribunal in O.A. 1234 of 2022., wherein once again following the judgment dated 30.08.2022 in O.A. 141 of 2017 (impugned in W.P.(C). 12135/2023), directions were issued to redraw the seniority list.

7. In W.P.(C) 16798/2023 the Direct Recruits appointed to the subject posts seek quashing of judgment dated 30.08.2022, of the Central Administrative Tribunal Principal Bench in O.A. 141 of 2017.

8. By a Judgment dated 30.08.2022, rendered in O.A. No. 141 of 2017 [impugned in W.P.(C) 12135/2023, W.P.(C) 16798/2023], the Central Administrative Tribunal, Principal Bench (hereinafter referred to as the Tribunal), allowed the challenge of the petitioner therein and



the impugned seniority lists were set aside, and ESIC was directed to re-draw the seniority list in accordance with the law laid down by the Supreme Court in *K. Meghachandra Singh (supra)* and the instructions & guidelines issued by the Department Of Personnel & Training (DOP&T) on the subject.

9. By the Judgment dated 20.04.2023 rendered in O.A. No.235 of 2017 (impugned in W.P.(C) 14351/2023), the Tribunal disposed of the petition with an observation that while redrawing the seniority list in accordance with the detailed observations and directions contained in the order passed in O.A. No. 1545/2015 and O.A. No 141/2017, as also the instructions and guidelines of the DOP&T on the subject, it further directed that ESIC shall also be guided by the instructions and provisions governing assignment of seniority to persons who have been recruited against the quota reserved for sportspersons.

10. By a Judgment dated 22.03.2023 rendered in O.A. No. 1234 of 2022 (impugned in W.P.(C) 14434/2023), the Tribunal disposed of the Petition in view of the order in O.A. No. 141/2017 whereby the impugned orders/seniority lists dated 04.03.2022, 15.03.2016 and 24.06.2016 were quashed and set aside. The Competent Authority was directed to re-draw the seniority list strictly in accordance with the observations made therein and the instructions & guidelines issued by



the DOP&T on the subject.

11. The genesis of the dispute pertains to the seniority between direct recruits and departmental promotees who were promoted through the Limited Departmental Competitive Examination of the year 2008-2009 and 2009-2010 for the post of Social Security Officer/Branch Managers Grade – II/Superintendents.

12. The contention on behalf of the Petitioners (ESIC and direct recruit petitioners) is that the Seniority lists in issue were drawn up in accordance with the law laid down by the Supreme Court in *N.R. Parmar vs. Union of India & Others (2012) 13 SCC 340* and as such are protected in terms of *K. Meghachandra Singh (supra)* wherein the Supreme Court, while overruling *N.R. Parmar (supra)*, held that the said decision will apply prospectively except where seniority is to be fixed under the relevant rules from the date of vacancy/the date of advertisement.

13. *Per contra* the contention of the Respondents (local promotes) is that the impugned senior lists, though were drawn up in terms of *N.R. Parmar (supra)* were not final and were immediately challenged and were *sub judice*.

14. As per the Recruitment Regulations for the subject post of post



of Social Security Officer/Branch Managers Grade – II/Superintendents notified on 27.03.1999, the method of recruitment was: -

“(a) 75% by Promotion from Assistant/Head Clerk on the basis of Seniority subject to rejection of unfit.

(b) 25% by Direct recruitment through a competitive examination and interview.

The ratio of Promotees and Direct recruit in Promotion was 3:1”

15. Thereafter, the Recruitment Regulations were amended and published on 19.05.2007 revising the method of Recruitment as under:

a) 50% by Promotion from Assistant/Head Clerk on the basis of Seniority subject to rejection of unfit.

b) 25% by Limited Departmental Competitive Examination (LDCE) from Assistant/Head Clerk.

c) 25% by Direct Recruitment through a competitive examination and interview.

The ratio of Promotees, Limited Departmental Competitive Candidates and Direct recruits in Promotion now became 2:1:1.

16. Till the Recruitment Regulations 2007 were published on 19.05.2007, the Recruitment for the subject post was being done on



the basis of Recruitment Regulations notified on 27.03.1999 which provided only two modes of Entry i.e. 75% by promotion and 25% by Direct Recruitment. There was no provision for recruitment through Limited Departmental Competitive Examination. On the notification of the 2007 Regulations recruitment through the process of LDCE's got initiated only against the vacancy year 2007-08 onwards.

17. For the vacancy year 2007-08, requisition for filling up 212 vacancies under LDCE quota was sent on 11.07.2007. Subsequently, the vacancy under LDCE was revised from 212 to 82 and the revised requisition for 82 vacancies under LDCE Quota was sent on 19.11.2007. Thereafter, another requisition in respect of 64 vacancies under LDCE Quota for the vacancy year 2007-08 was sent on 25.11.2008. The examination for vacancies of LDCE Quota of vacancy year 2007-08 was held in two lots.

18. The examination in respect of first lot was held on 27.05.2007 and on the basis of the result of the said examination 50 Officers were promoted under LDCE quota.

19. Examination in respect of second lot was held on 06.09.2008 and on the basis of result, 24 Officers were promoted under LDCE quota against vacancy year 2007-08.



20. DPC against the vacancy year 2007-08 was first held on 25, 28 and 29 April 2008 and second DPC for vacancy year 2007-08 was held on 26.09.2008. On the recommendations of two DPC, 148 Officers were promoted against the Vacancy year 2007-08.

21. In January 2008, an advertisement was issued by ESIC to fill up the subject post by way of direct recruitment. Pursuant to the selection process initiated by the said advertisement the Direct Recruits were appointed in the year 2009 – 2010.

22. A provisional seniority list dated 03.12.2010 for the period 2006-09 was issued wherein the Direct Recruits who had joined during the year 2009-10 were not included in the said list. On 20.09.2012 another provisional seniority list for the period 2006-09 was issued wherein again the direct recruits of the year 2009-10 were not included which was subsequently declared final vide memorandum dated 02.04.2013.

23. Thereafter, ESIC issued another provisional seniority list dated 21.05.2015 based on the judgment of the Supreme Court in *N.R. Parmar (supra)* whereby the direct recruits who joined in 2009-10 were placed in the vacancy year 2006-07, 2007- 08 and 2008-09.



24. The Private respondents represented/objected against the provisional seniority list. However, on 15.03.2016, the objections were rejected and the impugned seniority list dated 15.03.2016 was published. Subsequently, a corrigendum was issued on 24.06.2016 maintaining the determination of seniority and calling for representations/objections if any.

25. Finally the representations/objections were disposed of and the final seniority list was published on 08.11.2016 in terms of the various Office Memorandums issued by the Department of Personnel and Training (DoPT).

26. O.A. 141 of 2017 dated 28.12.2016 was filed in the Tribunal and listed in January, 2017 challenging the seniority lists dated 15.03.2016, 24.06.2016 and 08.11.2016.

27. By the judgments impugned herein the said seniority lists have been quashed and the Competent Authority has been directed to redraw the seniority lists in accordance with the law laid down in *K. Meghachandra Singh (supra)* and the instructions and guidelines issued by the Department of Personnel & Training (DoP&T).

28. Mr. S.V. Raju learned Additional Solicitor General conceded on behalf of the Petitioners that the subject seniority lists are not in



terms of the law laid down by the Supreme Court in *K. Meghachandra Singh (supra)*. He however contends that since the lists were drawn up in terms of the judgment of the Supreme Court in *N.R. Parmar (supra)* and had become final before the judgment in *K. Meghachandra Singh (supra)*, they are protected.

29. *Per contra*, learned counsel for the private respondents submits that the lists were not final and had been challenged immediately and the lists are not protected.

30. Reference may be had to the Judgment of the Supreme Court in *N.R. Parmar (Supra)* wherein the Supreme Court had held as under:

"31.2. It is not necessary, that the direct recruits for vacancies of a particular recruitment year, should join within the recruitment year (during which the vacancies had arisen) itself. As such, the date of joining would not be a relevant factor for determining seniority of direct recruits. It would suffice if action has been initiated for direct recruit vacancies, within the recruitment year in which the vacancies had become available. This is so, because delay in administrative action, it was felt, could not deprive an individual of his due seniority."

31. As per *N.R. Parmar (supra)*, the date of joining of Direct Recruits was not a relevant factor for determining their seniority of direct recruits. It would suffice if action had been initiated for direct



recruit vacancies, within the recruitment year in which the vacancies had become available.

32. In the present case, a provisional seniority list dated 03.12.2010 for the period 2006-09 was issued wherein the Direct Recruits who had joined during the year 2009-10 were not included. Thereafter another provisional seniority list was published for the period 2006-09 on 20.09.2012 was issued wherein again the direct recruits of the year 2009-10 were not included. The Seniority list for 2006-09 was subsequently declared final vide memorandum dated 02.04.2013.

33. As per the record there was no challenge to the said list declared final on 02.04.2013. However when the Supreme Court pronounced the judgment in *N.R. Parmar (supra)*, ESIC issued a provisional seniority list on 21.05.2015 based on *N.R. Parmar (supra)* whereby the direct recruits who joined in 2009-10 were placed in the vacancy year 2006-07, 2007-08 and 2008-09 as against their respective vacancy years.

34. The private respondents were placed below Direct Recruits who were appointed in the year 2009 and 2010 as well as the Promotes who were promoted under the Seniority Quota in the year 2008 even though the Answering Respondents were promoted through LDCE prior to them vide Office Order dated 19.11.2007.



35. The private respondents represented/objected against the provisional seniority list. However, on 15.03.2016, the objections were rejected and the impugned seniority list dated 15.03.2016 was published. Subsequently, a corrigendum was issued on 24.06.2016 maintaining the determination of seniority and calling for representations/objections if any.

36. Finally the representations/objections were disposed of and the final seniority list was published on 08.11.2016 in terms of the various Office Memorandums issued by the Department of Personnel and Training (DoP&T).

37. O.A. 141 of 2017 dated 28.12.2016 was filed in the Tribunal and listed in January, 2017 challenging the seniority lists dated 15.03.2016, 24.06.2016 and 08.11.2016.

38. Subsequently, on 19.11.2019 the Supreme Court pronounced the judgment in *K. Meghachandra Singh (supra)* and overruled the principle laid down in *N.R. Parmar (supra)* and held as under:

“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 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 [Shankarsan Dash v. Union of India, (1991) 3 SCC 47 : 1991 SCC (L&S) 800] , 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 [Jagdish Ch. Patnaik v. State of Orissa, (1998) 4 SCC 456 : 1998 SCC (L&S) 1156], Suraj Parkash Gupta v. State of J&K [Suraj Parkash Gupta v. State of J&K, (2000) 7 SCC 561 : 2000 SCC (L&S) 977] and Pawan Pratap Singh v. Reevan



Singh [Pawan Pratap Singh v. Reevan Singh, (2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481]. 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.

46. ******The term “recruitment year” does not and cannot mean the year in which, the recruitment process is initiated or the year in which vacancy arises. The contrary declaration in N.R.Parmar in our considered opinion, is not a correct view.*

(Underlining supplied)

39. As per K. Meghachandra Singh (*supra*) the expression “recruitment year” does not mean the year in which, the recruitment process is initiated or the year in which vacancy arises. No candidate



can be identified as a selected candidate on the date when the process of recruitment had commenced. The candidates on that day are only aspiring to be appointed to the vacancy intended for direct recruits. Persons responding to an advertisement cannot have any service-related rights. Their seniority cannot be counted from the date of the advertisement. Only on completion of the process, does the candidate morph into a selected candidate. Seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre.

40. The Supreme Court however, clarified that the decision in *K. Meghachandra (supra)* would apply prospectively except where seniority was to be fixed under the relevant rules from the date of vacancy/the date of advertisement and would not affect the inter se seniority already based on *N.R. Parmar* and the same was protected.

41. The gravamen of the submission of the Petitioners is that the impugned seniority lists were prepared in terms of the law laid down in *N.R. Parmar (supra)* and as such were protected as per *K. Meghachandra (supra)*.

42. By the impugned judgment, the Tribunal allowed the challenge of the private respondents and the impugned seniority lists were set aside, and ESIC was directed to re-draw the seniority list in accordance with the law laid down by the Supreme Court in



K.Meghachandra Singh (supra) and the instructions & guidelines issued by the Department Of Personnel & Training (DOP&T) on the subject.

43. The provisional seniority list was published for the first time on 21.05.2015 based on *N.R. Parmar (supra)* calling for objections/representations. Private respondents represented/objected against the said provisional seniority list. On 15.03.2016, the objections were rejected. Subsequently, a corrigendum was issued on 24.06.2016 and again representations/objections were called for. Said list was also objected to. Finally the representations/objections were disposed of and the impugned final seniority list was published on 08.11.2016.

44. Immediately thereafter subject Original Application being O.A. 141 of 2017 dated 28.12.2016 was before the Tribunal and was listed in January, 2017 challenging the seniority lists dated 15.03.2016, 24.06.2016 and 08.11.2016. The Tribunal by order dated 29.10.2020 directed that any promotion that took place in the meanwhile, would be subject to the outcome of the O.A. Further, the promotions made thereafter vide Office Orders dated 19.03.2021 and 23.12.2020 have been made subject to the outcome to the subject Original Application.

45. Clearly, the impugned seniority lists dated 15.03.2016,



24.06.2016 and 08.11.2016 were not settled Seniority Lists as they had been objected to and immediately challenged by approaching the Tribunal on 28.12.2016.

46. Since the impugned lists were not final and under a cloud, they are not protected in terms of the saving paragraph in *K. Meghachandra (supra)*. Even the tribunal had directed that any promotion made would be subject to outcome of the said Application and in fact promotions made thereafter were made by ESIC also subject to outcome of the Application. Thus, there is no merit in the contention on behalf of the Petitioner that the lists are protected.

47. In view of the above, there is no merit in the Petitions and the same are consequently dismissed. The Petitioner ESIC is directed to



comply with the directions issued by the Tribunal and re-draw the Seniority List for the post of Social Security Officer/Branch Managers Grade – II/Superintendents in the Employee State Insurance Corporation in accordance with the law laid down by the Supreme Court in *K. Meghachandra Singh (supra)* and the instructions & guidelines issued by the Department Of Personnel & Training (DOP&T) on the subject. The exercise be completed within a period of eight weeks.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

MARCH 18, 2024

HJ