



2024:DHC:7902-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 14126/2024 and CM APPL. 59193/2024, 59194/2024
and 59195/2024

INDIAN COUNCIL OF AGRICULTURAL
RESEARCH AND ANR

.....Petitioners

Through: Mr. Dhruv Sheoran and Mr.
Archit Upadhyay, Advocates
versus

YUGAL KISHORE SAH AND ORS

.....Respondents

Through: Sachin Chauhan alongwith
Advocate Ridhi Dua, Abhimanyu Balyan for
Respondents 1 and 2. Ms. Radhika Bishwajit
Dubey, CGSC with Ms. Gurleen Kaur
Waraich, Ms. Drishti Rawal and Mr. Aviral
Jain, Advocates with Mr. Deepak Tanwar,
Govt. Pleader, Mr. Rajiv Kumar and Mr.
Hitesh Batra, Advocates for R-5 and 6

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (ORAL)

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07.10.2024

C.HARI SHANKAR, J.

The *lis*, and its resolution

1. Respondents 1 to 4 and Respondents 7 to 29 in the present writ petition are Assistants in the Indian Council of Agricultural Research (ICAR). Respondents 1 to 4 are promotee Assistants, whereas



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Respondents 7 to 29 are direct recruits¹. The ICAR circulated a provisional seniority list of Assistants as on 31 December 2020, on 20 September 2021. This was followed by a revised provisional seniority list circulated on 17 January 2022 and a final seniority list circulated on 13 October 2022. In the said seniority lists, Respondents 7 to 29 were shown *en bloc* senior to Respondents 1 to 4. Respondents 1 to 4 assailed the said seniority lists before the learned Central Administrative Tribunal² by way of OA 1729/2023, wherein it was prayed that the said seniority lists be quashed and set aside and seniority of Respondents 1 to 4, *vis-à-vis* Respondents 7 to 29 as Assistants be refixed on the basis of the judgment of the Supreme Court in *K. Meghachandra Singh v Ningam Siro*³.

2. The learned Tribunal has, by the impugned judgment dated 25 April 2024, allowed the OA. The seniority lists circulated on 20 September 2021, 17 January 2022 and 13 October 2022 have been quashed and set aside. The ICAR has been directed to re-draw the seniority list of Assistants strictly in terms of the judgment in *Meghachandra*. Till the revised seniority list is drawn up, the ICAR has also been restrained from consideration of Assistants belonging to the 2017 LDCE⁴ Batch for further promotion as Section Officer⁵.

3. Aggrieved by the said decision, the ICAR has preferred the present writ petition, seeking that the judgment of the learned Tribunal

¹ “DRs” hereinafter

² “the learned Tribunal” hereinafter

³ (2020) 5 SCC 689, hereinafter cited as “*Meghachandra*”

⁴ “Limited Departmental Competitive Examination” hereinafter

⁵ “SO” hereinafter



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be quashed and set aside.

4. Matters involving *inter se* seniority between DRs and promotees are by nature complex. Decades of jurisprudence is available on the issue and it may not be incorrect to say that the last word on the subject is yet to be said. The controversy in the present case, however, is, mercifully, not that complex, and essentially turns on the interpretation of the following sentences with which para 39 of the judgment of the Supreme Court in ***Meghachandra*** concludes:

“However, it is made clear that this decision will not affect the *inter se* seniority already based on ***N.R. Parmar***⁶ 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.”

5. Admittedly, the seniority lists which were impugned by Respondents 1 to 4 before the learned Tribunal in OA 1729/2023 were prepared on the basis of the judgment of the Supreme Court in ***Parmar***. The case of Respondents 1 to 4 before the learned Tribunal – which the impugned judgment accepts – was that ***Parmar*** stands overruled in ***Meghachandra*** and, therefore, the seniority lists prepared by the ICAR on the basis of the judgment in ***Parmar*** could not sustain, especially as they have been drawn up and circulated after ***Meghachandra*** had been rendered, overruling ***Parmar***.

6. ICAR, on the other hand, seeks to take shelter behind the afore-extracted caveat in para 39 of ***Meghachandra***. The *inter se* seniority between Respondents 1 to 4 and Respondents 7 to 29, i.e. between the

⁶ **UOI v N.R. Parmar (2012) 13 SCC 340**, cited hereinafter as “**Parmar**”



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promotee and DR Assistants, according to ICAR, was rightly fixed based on *Parmar*.

7. The basis for this contention is that Respondents 1 to 4 had been promoted and Respondents 7 to 29 had been directly recruited as Assistants in the ICAR *before* the rendition of the judgement in *Meghachandra*. According to ICAR, the afore-extracted sentences in para 39 of *Meghachandra* require the *inter se* seniority between DRs and promotee Assistants, *who had been appointed prior to Meghachandra*, to be fixed on the basis of *Parmar*. The fact that the seniority list was actually drawn up and circulated after *Meghachandra* stands rendered, according to ICAR, would make no difference.

8. As this judgment would conclude, we are not in agreement with the stand of the ICAR. In our view, any seniority list between DRs and promotees, drawn up after *Meghachandra*, has to abide by the law declared in *Meghachandra*. *Meghachandra* categorically holds *Parmar* to be wrong law in so many words. Once *Meghachandra* stood pronounced, therefore, there can be no question reverting to *Parmar* or drawing up any seniority list on the basis of *Parmar*. The reason is elementary. It is plainly impermissible to read the judgment of the Supreme Court in *Meghachandra* as permitting the petitioners to continue to apply *Parmar*, even after the Supreme Court holds *Parmar* to be wrongly decided. The Supreme Court can never be understood as directing the petitioners to act illegally, and apply wrong law while fixing seniority, which is how the petitioners seek to



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interpret **Meghachandra**. The petitioners' contention is that the Supreme Court has authorized – rather, directed – seniority, between DRs and promotes recruited prior to the rendition of the judgement in **Meghanchandra**, to be fixed on the basis of **Parmar**, even while holding **Parmar** to be wrong law. Any such interpretation of **Meghanchandra** would be not only preposterous, but absurd.

9. All that para 39 of **Meghachandra** saves, in our opinion, is seniority *which already stands fixed as per Parmar*, before **Meghachandra** was rendered. In no circumstances can **Meghachandra** be understood as authorizing, or permitting, *inter se* seniority between DRs and promotees to be fixed, after **Meghanchandra** stood rendered, in accordance with **Parmar**, irrespective of when the officers whose *inter se* seniority was being fixed were inducted in the service.

10. We, therefore, concur with the learned Tribunal in its view that the ICAR was in error in circulating the seniority lists on 20 September 2021, 7 January 2022 and 13 October 2022 on the basis of **Parmar**. The seniority had necessarily to be fixed as per **Meghachandra**, and the learned Tribunal is perfectly correct in directing the ICAR to do so.

11. To reiterate – for the point is of some importance, and has recurring effect – the protection granted by the concluding sentences in para 39 of **Meghachandra**, according to us, applies only to cases in which the *inter se* seniority between DRs and promotees *stood drawn*



up prior to the rendition of the decision in *Meghachandra*. In other words, if any seniority list, fixing seniority between Respondents 1 to 4 and Respondents 7 to 29, had been prepared prior to *Meghachandra*, the afore-extracted sentences from para 39 of *Meghachandra* would immunize that seniority list from further interference. Admittedly, in the present case, no *inter se* seniority list between Respondents 1 to 4 and Respondents 7 to 29 had been drawn up between the rendition of judgment in *Parmar* and *Meghachandra*. It was for the first time, after *Meghachandra* stood rendered, that the seniority list came to be drawn up, firstly on provisional basis on 20 September 2021 and 17 January 2022, followed by the final seniority list on 13 October 2022. These seniority lists could not, therefore, have been drawn up on the basis of the judgment in *Parmar*. Inasmuch as they were so drawn, the learned Tribunal has correctly set them aside and has correctly directed the ICAR to prepare a fresh seniority list on the basis of the decision in *Meghachandra*.

12. That, therefore, is the controversy, and our view thereon, in a nutshell.

13. Though the above recital would be sufficient to dispose of this petition, we deem it appropriate to present a somewhat more detailed picture of the controversy, so that it is revealed in all its shades.

14. MHA OM dated 22 December 1959

The general principles for determination of *inter se* seniority between



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DRs and promotees in the central services were first set out in an annexure to an Office Memorandum⁷ dated 22 December 1959⁸ issued by the Ministry of Home Affairs⁹, Govt. of India, para 6 of which read thus:

“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”

This OM introduced, for the first time, what came to be known as quota-rota principle. It provided that, in any case in which recruitment to a post or grade could be made both by direct recruitment and promotion, the *inter se* seniority between DRs and promotees would be fixed by rotation, based on the quotas of vacancies reserved for both categories of recruits in the applicable Rules. What this essentially meant was that, if, for example, the applicable Recruitment Rules¹⁰ provided for 60% of the vacancies in any post or grade to be filled up by direct recruitment and 40% by promotion, seniority between DRs and promotees would also be fixed on the basis of the same quota, by rotating them. In other words, in the seniority list, three DRs would be followed by two promotees, who would be followed by three DRs who would be followed by two promotees and so on.

15. DOPT OM dated 7 February 1986

⁷ “OM” hereinafter

⁸ “the 1959 OM” hereinafter

⁹ “MHA”



15.1 The 1959 OM, however, did not provide for a situation in which one of the quotas remained unfilled for some time for want of sufficient candidates. To deal with such an exigency, the Department of Personnel and Training¹¹ issued an OM on 7 February 1986¹². This OM, which constituted the fulcrum of consideration in *Parmar*, read thus:

“7-2-1986.

Office Memorandum

Subject: 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 OM No. 9/11/55-RPS dated 22-12-1959. According to Para 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. While the abovementioned principle was working satisfactorily in cases where direct recruitment and promotion kept pace with each other and recruitment could also be made to the full extent of the quotas as prescribed, in cases where there was delay in direct recruitment or promotion, or where enough number of direct recruits or promotees did not become available, there was

¹⁰ “RRs” hereinafter

¹¹ “DoPT” hereinafter

¹² “the 7.2.86 OM” hereinafter



difficulty in determining seniority. *In such cases, the practice followed at present is that the slots meant for direct recruits or promotees, which could not be filled up, were left vacant, and when direct recruits or promotees became available through later examinations or selections, such persons occupied the vacant slots, thereby became senior to persons who were already working in the grade on regular basis. In some cases, where there was shortfall in direct recruitment in two or more consecutive years, this resulted in direct recruits of later years taking seniority over some of the promotees with fairly long years of regular service already to their credit. This matter had also come up for consideration in various court cases both before the High Courts and the Supreme Court and in several cases the relevant judgment had brought out the inappropriateness of direct recruits of later years becoming senior to promotees with long years of service.*

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 bunched together at the bottom of the seniority list, below the last position up to 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,*



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of direct recruitment or promotion quota vacancies (as the case may be) in the subsequent years.

Illustration:

Where the Recruitment Rules provide 50% of the vacancies in a grade to be filled by promotion and the remaining 50% by direct recruitment, and assuming there are 10 vacancies in the grade arising in each of the years 1986 and 1987 and that 2 vacancies intended for direct recruitment remained unfilled during 1986 and they could be filled during 1987, the seniority position of the promotees and direct recruits of these two years will be as under:

1986	1987
1. P1	9. P1
2. D1	10. D1
3. P2	11. P2
4. D2	12. D2
5. P3	13. P3
6. D3	14. D3
7. P4	15. P4
8. P5	16. D4
	17. P5
	18. D5
	19. D6
	20. D7

4. In order to help the appointing authorities in determining the number of vacancies to be filled during a year under each of the methods of recruitment prescribed, a vacancy register giving a running account of the vacancies arising and being filled from year to year may be maintained in the pro forma enclosed.

5. With a view to curbing any tendency of underreporting/suppressing the vacancies to be notified to the authorities concerned for direct recruitment, it is clarified that promotees will be treated as regular only to the extent to which direct recruitment vacancies are reported to the recruiting authorities on the basis of the quotas prescribed in the relevant Recruitment Rules. Excess promotees, if any, exceeding the share falling to the promotion quota based on the corresponding figure, notified for direct recruitment would be treated only as ad hoc promotees.



6. *The General Principles of seniority issued on 22-12-1959 referred to above, may be deemed to have been modified to that extent.*

7. These orders shall take effect from 1-3-1986. 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 OM.

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 the OM dated 22-12-1959 are applicable within 2 weeks as these orders will be effective from the next month.

sd/-

Joint Secretary to the Government of India”

(Emphasis supplied)

15.2 *Parmar* analyzed the aforesaid OM, in detail, thus, in paras 26.1 to 26.8:

“26.1. Para 2 of the OM dated 7-2-1986 first records the existing manner of determining inter se seniority between direct recruits and promotees (i.e. as contemplated by the OM dated 22-12-1959), namely:

“...the slots meant for direct recruits or promotees, which could not be filled up, were left vacant, and when direct recruits or promotees become available through later examinations or selections, such persons occupied the vacant slots, (and) thereby became senior to persons who were already working in the grade on regular basis. In some cases, where there was shortfall in direct recruitment in two or more consecutive years, this resulted in direct recruits of later years taking seniority over some of the promotees with fairly long years of regular service to their credit ...”.



The words, “when direct recruits or promotees become available through later examinations or selections”, clearly connotes, that the situation contemplated is one where, there has been an earlier examination or selection, and is then followed by a “later” examination or selection. It is implicit, that in the earlier examination or selection there was a shortfall, inasmuch as, the available vacancies for the recruitment year concerned could not all be filled up, whereupon, further examination(s) or selection(s) had to be conducted to make up for the shortfall. In the instant situation, the earlier OM dated 22-12-1959 contemplated/provided, that slots allotted to a prescribed source of recruitment which remained vacant, would be filled up only from the source for which the vacancy was reserved, irrespective of the fact that a candidate from the source in question became available in the next process of examination or selection, or even thereafter. In other words the “rotation of quotas” principle was given effect to in letter and spirit under the OM dated 22-12-1959, without any scope of relaxation.

26.2. The position expressed in sub-para 26.1. above, was sought to be modified by the OM dated 7-2-1986, by providing in Para 3 thereof, that the earlier “principle of rotation of quotas would still be followed for determining the inter se seniority of direct recruits and promotees” except when the direct recruit vacancies were being “filled up by direct recruits of later years”. Read in conjunction with Para 2 of the OM dated 7-2-1986, the words “direct recruits of later years” must be understood to mean, direct recruits who became available through “later” examination(s) or selection(s). Essentially the “later” examination(s) or selection(s) should be perceived as those conducted to fill up the carried-forward vacancies i.e. vacancies which could not be filled up, when the examination or selection for the recruitment year concerned was originally/first conducted. This change, it was clarified, was made to stop direct recruits of “later” years, from gaining “unintended seniority over promotees who are already in position”, as the High Courts and the Supreme Court had “brought out the inappropriateness” thereof. It is, therefore, apparent that the OM dated 7-2-1986 partially modified the “rotation of quotas” principle in the determination of inter se seniority originally expressed in the OM dated 22-12-1959. The OM dated 7-2-1986, provided that the “rota” (rotation of quotas) would be adhered to “only to the extent of available direct recruits and promotees” i.e. for promotee and direct recruit vacancies which could be filled up through the original/first process of examination or selection conducted for the recruitment year in which the vacancies had arisen.

26.3. For the vacancies remaining unfilled when the same were originally/first sought to be filled up, the slots available under the



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“rota” principle under the OM dated 22-12-1959, would be lost to the extent of the shortfall. In other words, the “rotation of quotas” principle would stop operating after “the last position up to which it is (was) possible to determine seniority on the basis of rotation of quotas”, for the recruitment year concerned.

26.4. Para 3 of the OM dated 7-2-1986 provided the manner of assigning seniority to vacancies carried forward on account of their having remained unfilled in the original/first examination or selection process. The change contemplated in the OM dated 7-2-1986, referred to hereinabove, was made absolutely unambiguous by expressing that:

“The unfilled direct quota vacancies would ... be carried forwarded and added to the corresponding direct recruitment vacancies of the next year....”

It is therefore apparent that seniority of carried-forward vacancies would be determined with reference to vacancies of the recruitment year wherein their selection was made i.e. for which the “later” examination or selection was conducted.

26.5. The OM dated 7-2-1986 formulated the stratagem to be followed, where adequate number of vacancies in a recruitment year could not be filled up through the examination or selection conducted therefor. The OM provided:

“... to the extent direct recruits are not available, the promotees will be bunched together at the bottom of the seniority list, below the last position up to which it is (was) possible to determine the seniority on the basis of rotation of quotas with reference to the actual number of direct recruits who become available....”

26.6. Para 3 of the OM dated 7-2-1986 further postulated, that the modification contemplated therein would be applied prospectively, and that:

“...the present practice of keeping vacant slots for being filled up by direct recruits of later years, ... over promotees who are (were) already in position, would be dispensed with...”

It is therefore apparent that the slots assigned to a particular source of recruitment, would be relevant for determining inter se



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seniority between promotees and direct recruits, to the extent the vacancies could successfully be filled up (and the unfilled slots would be lost) only for vacancies which arose after the OM dated 7-2-1986 came to be issued.

26.7. The illustration provided in Para 3 of the OM dated 7-2-1986 fully substantiates the analysis of the OM dated 7-2-1986 recorded in the foregoing sub-paragraphs. In fact, the conclusions drawn in the foregoing sub-paragraphs have been drawn, keeping in mind the explanatory illustration narrated in Para 3 of the OM dated 7-2-1986.

26.8. In Para 6 of the OM dated 7-2-1986 it was asserted, that the General Principles for determining seniority in the OM dated 22-12-1959 were being “modified” to the extent expressed (in the OM dated 7-2-1986). The extent of modification contemplated by the OM dated 7-2-1986 has already been delineated in the foregoing sub-paragraphs. Para 6 therefore leaves no room for any doubt, that the OM dated 22-12-1959 stood “amended” by the OM dated 7-2-1986 on the issue of determination of inter se seniority between direct recruits and promotees to the extent mentioned in the preceding sub-paragraphs. The said amendment was consciously carried out by the Department of Personnel and Training, with the object of remedying the inappropriateness of direct recruits of “later” examination(s) or selection(s) becoming senior to promotees with long years of service, in terms of the OM dated 22-12-1959.”

15.3 As understood in *Parmar*, therefore, the 1959 OM of the MHA stood modified by the 7.2.86 OM. It was observed that a radical change had been brought about, in the 7.2.86 OM, with respect to the manner in which *inter se* seniority between DRs and promotees was to be fixed, in a situation in which, for a particular recruitment year, sufficient DRs to fill up the direct recruitment quota were not available. While the 1959 OM required the unfilled DR vacancies to remain unfilled, awaiting the arrival of DRs in a subsequent recruitment year/recruitment years, this position was altered by the 7.2.86 OM, which did not allow this to happen. The 7.2.86 OM provided that, where the DR quota vacancies of one particular



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recruitment year were being filled up by DRs recruited in later recruitment years, the quota rota principle would not apply. The quota rota principle was, therefore, to be applied on recruitment year-wise basis. Unfilled DR vacancies in one particular year were to be carried forward to later recruitment years. The 7.2.86 OM envisaged that, in such a situation, the quota rota rule would be applied, in any particular recruitment year, to the extent of availability of direct recruits, to fill up the DR quota vacancies in that particular year.

15.4 To the extent the DR quota vacancies remained unfilled, i.e. to the extent there were no direct recruits available to fill up the DR quota vacancies, those vacancies would be carried forward to the next recruitment year, and the remaining promotees of the earlier recruitment year would be bunched below the last vacancy of the earlier recruitment year which it was possible to fill up on quota rota basis. This system, it was pointed out, would ameliorate the inequity that resulted if direct recruits of later recruitment years were to be placed senior to promotees of earlier recruitment years.

16. DOPT OM dated 3 July 1986

16.1 The 7.2.86 OM was followed by another OM of the DoPT, issued on 3 July 1986¹³. As was noted in *Parmar*, the 3.7.86 OM merely reiterated the 7.2.86 OM. This is apparent from paras 2.4.1 and 2.4.2 of the 3.7.86 OM, which may be reproduced thus:

¹³ “the 3.7.86 OM” hereinafter



“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 do 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.

In other words, to the extent direct recruits are not available the promotees will be bunched 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 for 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 year.*

Illustration

Where the Recruitment Rules provide 50% of the vacancies of a grade to be filled by promotion and the remaining 50% by direct recruitment, and assuming there are ten vacancies in the grade arising in each of the year 1986 and 1987 and that two vacancies intended for direct recruitment remain unfilled during 1986 and they could be filled during 1987, the seniority position of the promotees and direct recruits of these two years will be as under:

1986	1987
1. P1	9. P1
2. D1	10. D1



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- | | |
|-------|---------|
| 3. P2 | 11. P2 |
| 4. D2 | 12. D2 |
| 5. P3 | 13. P3 |
| 6. D3 | 14. D3 |
| 7. P4 | 15. P4 |
| 8. P5 | 16. D4 |
| | 17. P5 |
| | 18. D5 |
| | 19. D6 |
| | 20. D7” |

16.2 Apropos the 3.7.86 OM, *Parmar* observed as under:

“28. The following conclusions have been drawn by us from the OM 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 recruitment year concerned.

28.2. To the extent direct recruits were not available for the recruitment year concerned, the promotees would be bunched together at the bottom of the seniority list, below the last position up to 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 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.

29. It is, therefore apparent that the position expressed in the



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OMs 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.”

17. DOPT OM dated 3 March 2008

17.1 On 3 March 2008, the DoPT issued the following further OM¹⁴:

“New Delhi, dated the 3rd March, 2008

Office Memorandum

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. 22011/7/1986-Estt.(D) dated 3.7.1986 laying down the principles for determination of seniority of persons appointed to services/posts under the Central Government.

2. Paras 2.4.1 and 2.4.2 of the OM dated 3.7.1986 contain 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 available direct recruits and the promotees.

3. Some references have been received seeking clarifications regarding the term ‘available’ used in the preceding paragraph of the OM dated 3.7.1986. *It is hereby clarified that while the inter se*

¹⁴ “the 2008 OM” hereinafter



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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.

sd/-
Director (Estt.I)

(Emphasis supplied)

17.2 Apropos the 2008 OM, **Parmar** observed and held thus:

“40. The following conclusions, in our view, can be drawn from the OM dated 3-3-2008:

40.1. The OM dated 3-3-2008 is in the nature of a “clarification” to the earlier consolidated instructions on seniority, contained in the OM dated 3-7-1986 (referred to and analysed, in paras 27 to 29 above).

40.2. The term “available” used in Para 2.4.2 in the OM dated 3-7-1986 has been “clarified” to mean, both in case of direct recruits as well as promotees, for the purpose of fixation of seniority, would be the actual year of appointment “after the declaration of the result/selection i.e. after the conclusion of the selection process, and after the “completion of the pre-appointment formalities” (medical fitness, police verification, etc.).



40.3. As per the OM dated 3-7-1986, when appointments are made against unfilled vacancies in subsequent year(s), the persons appointed would “not” get seniority with reference to the year in which the vacancy arose, or the year in which the recruitment process was initiated, or the year in which the selection process was conducted.

40.4. As per the OM dated 3-3-2008, when appointments are made against unfilled vacancies in subsequent year(s), the persons appointed would get seniority of the year in which they are appointed “on substantive basis”.

41. Before examining the merits of the controversy on the basis of the OM dated 3-3-2008, it is necessary to examine one related submission advanced on behalf of the direct recruits. It was the contention of the learned counsel, that the OM dated 3-3-2008 being an executive order issued by the Department of Personnel and Training, would apply only prospectively. In this behalf it was pointed out, that the disputed seniority between rival parties before this Court was based on the appointment to the cadre of Income Tax Inspectors, well before the OM dated 3-3-2008 was issued. As such, it was pointed out, that the same would not affect the merits of controversy before this Court. We have considered the instant submission. It is not possible for us to accept the aforesaid contention advanced at the hands of the learned counsel. If the OM dated 3-3-2008 was in the nature of an amendment, there may well have been merit in the submission. The OM dated 3-3-2008 is in the nature of a “clarification”. Essentially, a clarification does not introduce anything new, to the already existing position. A clarification, only explains the true purport of an existing instrument. As such, a clarification always relates back to the date of the instrument which is sought to be clarified.”

17.3 Thus, the 2008 OM did not, in any manner, alter the principles for fixation of *inter se* seniority between direct recruits and promotees as set out in the 7.2.86 OM and the 3.7.86 OM. It merely clarified the meaning and import of the word “available” as employed in the 1986 OMs, while referring to the DRs being “available” in a particular recruitment year. The 2008 OM clarified that “availability” would pertain to substantive appointment. In other words, if the process for appointment of DRs was to commence in recruitment year A, and was



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to continue over recruitment year B and the DRs were to actually be substantively appointed in recruitment year C, they would be treated as DRs who were available in recruitment year C. They would not, therefore, be entitled to fixation of their seniority *vis-à-vis* promotees of recruitment year A on quota rota basis. ***Parmar*** also held that, as the 2008 OM was only a clarification, and not an amendment, and clarifications apply retrospectively, the 2008 OM would apply retrospectively to the dates when the 1986 OMs had been issued.

18. ***Parmar***

18.1 The actual dispute on facts, in ***Parmar***, related to fixation of *inter se* seniority between direct recruits and promotee Income Tax Inspectors. Having examined, in detail, the 1959 OM, the two 1986 OMs and the 2008 OM as aforementioned, the Supreme Court, in para 52 of ***Parmar***, provided the following conclusions regarding the factual nature of the controversy before it, thus:

“52. Having interpreted the effect of the OMs dated 7-2-1986 and 3-7-1986 (in paras 25 to 29 hereinabove), we are satisfied, that not only the requisition but also the advertisement for direct recruitment was issued by SSC in the recruitment year in which direct recruit vacancies had arisen. The said factual position, as confirmed by the rival parties, is common in all matters being collectively disposed of. In all these cases the advertised vacancies were filled up in the original/first examination/selection conducted for the same. None of the direct recruit Income Tax Inspectors herein can be stated to be occupying carried-forward vacancies, or vacancies which came to be filled up by a “later” examination/selection process. The facts only reveal that the examination and the selection process of direct recruits could not be completed within the recruitment year itself. For this, the modification/amendment in the manner of determining the *inter se* seniority between the direct recruits and promotees, carried out



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through the OM dated 7-2-1986, and the compilation of the instructions pertaining to seniority in the OM dated 3-7-1986, leave no room for any doubt, that the “rotation of quotas” principle would be fully applicable to the direct recruits in the present controversy. The direct recruits herein will therefore have to be interspaced with promotees of the same recruitment year.”

18.2 Thus, in *Parmar*, the Supreme Court observed that, on facts, it did not have to deal with a situation in which there were insufficient direct recruits to fill up the DR quota vacancies in any particular recruitment year, and the DR quota vacancies were required to be carried forward. The promotees and the direct recruits between whom the seniority was required to be fixed, belonged to the same recruitment year. None of the direct recruit Income Tax Inspectors was occupying any carried forward vacancies. As such, the Supreme Court held that the *inter se* seniority between the direct recruits and promotee inspectors had to be filled up on quota rota basis.

19. *Meghachandra*

19.1 The above legal position, enunciated in *Parmar* on 27 November 2012, continued to hold the field for 7 years less 8 days, till the decision in *Meghachandra* came to be rendered on 19 November 2019.

19.2 *Meghachandra*, in no uncertain terms, holds *Parmar* to be wrongly decided. While *Parmar* was decided by a Bench of two Hon’ble Judges, *Meghachandra* was rendered by a Bench of three Hon’ble Judges.



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19.3 The dispute in *Meghachandra* pertains to *inter se* seniority between DRs and promotees in the Manipur Police Service Grade-II¹⁵ Officers Cadre. Meghachandra and other appellants before the Supreme Court were DRs, whereas the private respondents before the Supreme Court were promotees in the same cadre. The promotees had been inducted on 1 March 2007, whereas the DRs were recruited *vide* orders dated 14 August 2007 and 24 November 2007.

19.4 *Vide* order dated 17 May 2013, the Govt. of Manipur issued a final seniority list of MPS Grade-II Cadre Officers, fixing the seniority between DRs and promotees on quota rota basis. This resulted in the DRs who have been recruited after the promotees had joined, being placed senior to the promotees.

19.5 The promotees (who were the respondents before the Supreme Court in *Meghachandra*), therefore, challenged this fixation of seniority before the High Court of Manipur by way of WP (C) 366/2013. The promotees contended that, as they had joined the service on 1 March 2007, whereas the DRs had joined on 14 August 2007 and 24 November 2007, the DRs could not be placed above them in the seniority list. The DRs contended, on the other hand, that their *inter se* seniority, *vis-à-vis* the promotees, had correctly been fixed on the basis of the year of the vacancy, and could not be fixed on the basis of the date on which their recruitment was finalized.

19.6 A learned Single Judge of the High Court of Guwahati, *vide* his

¹⁵ “MPS Grade II” hereinafter



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judgment dated 7 July 2017, accepted the stand of the promotees (i.e. Meghachandra *et al*). He held that the promotees who had been appointed on 1 March 2007 were entitled to seniority over the DRs appointed on 14 August 2007 and 24 November 2007, as a DR could claim seniority only from the date of his regular appointment and not from a date on which he was not borne in the service. Reliance was placed, for this purpose, on the judgment of the Supreme Court in *Jagdish Ch Patnaik v State of Orissa*¹⁶. The learned Single Judge also held that the expression “year” referred to a financial year and not a calendar year. As such, the promotees had joined the service in the year 2006-2007, whereas the direct recruits had joined in 2007-2008. As the two categories of appointees had joined the service in two different recruitment years, the learned Single Judge held that there was no question of applying the quota rota principle.

19.7 This decision was challenged by some of the direct recruits in writ appeal. The Division Bench of the High Court upheld the decision of the learned Single Judge, but confined its justification to the principle that seniority for DRs could not be reckoned from a date prior to their appointment. To that extent, the Division Bench agreed with the decision of the learned Single Judge. As the Division Bench proceeded on this basic principle, it held that there was no necessity of going into the issue of whether the word “year” was the calendar year or financial year.

19.8 The DRs, i.e. Meghachandra and others, therefore, challenged

¹⁶ (1998) 4 SCC 456



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the judgment of the Division Bench of the High Court by way of SLP in the Supreme Court, which came to be decided by the decision under reference.

19.9 Dealing with the merits of the controversy before it, the Supreme Court held, at the outset, that it was well-settled that a person could not claim seniority prior to the date on which he was borne in the service. No person could, therefore, be granted seniority from a date on which he had not yet been recruited to the service. For this purpose, the Supreme Court placed reliance on its earlier decisions in *Jagdish Ch Patnaik, Pawan Pratap Singh v Reevan Singh*¹⁷ and *State of UP v Ashok Kumar Srivastava*¹⁸. These decisions, it was noted, held that “seniority cannot be given to an employee who is yet to be borne in the cadre and by doing so it may adversely affect the employees who have been validly appointed in the meantime”. It was also noted that the Manipur Police Service Rules, 1965¹⁹ did not provide that seniority was to be counted from the date of vacancy.

19.10 The Supreme Court, thereafter, specifically dealt with the earlier decision in *Parmar*, and it is to that extent that the decision in *Meghachandra* is of relevance in the case at hand. Apropos *Parmar*, the Supreme Court held, in paras 37 to 39 of *Meghachandra*, thus:

“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

¹⁷ (2011) 3 SCC 267

¹⁸ (2014) 14 SCC 720

¹⁹ “the MPS Rules”, hereinafter



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 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*²⁰, 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*²¹ and *Pawan Pratap 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.*

²⁰ (1991) 3 SCC 47

²¹ (2000) 7 SCC 561



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*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.”*

(Italics and underscoring supplied)

This was followed by the following caveat, already reproduced *supra*, on which the petitioners rely:

“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.”

19.11 Thus, **Meghachandra**, quite clearly, disapproved the view, in **Parmar**, that DRs could claim seniority over promotees who had been recruited in the same recruitment year, but earlier to them, merely because the vacancies against which the DRs were appointed had arisen prior to the vacancies against which the promotees were promoted. No one, according to **Meghachandra**, can claim seniority from a date on which he was yet to be borne on the cadre, be he a DR or a promotee. In other words, **Meghachandra** requires, unambiguously, seniority to be fixed on the basis of date of actual entry into the service, whether it be by the DRs or the promotees. The principle of granting promotion from the date on which the vacancies arose has been clearly disapproved.

20. **Hariharan v. Harsh Vardhan Singh Rao**²², and the prayer to adjourn the proceedings *sine die*

²² 2022 SCC OnLine SC 1717, referred to, hereinafter, as “**Hariharan**”



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20.1 In *Hariharan*, it was sought to be contended, before a Bench of two Hon'ble Judges of the Supreme Court, that *Meghachandra* had been wrongly decided, as the attention of the Bench which decided *Meghachandra* was not drawn to the earlier decisions of the Constitution Bench of the Supreme Court in *Mervyn Coutindo v Collector of Customs, Bombay*²³ and *M Subba Reddy v AP State Road Transport Corporation*²⁴.

20.2 *Hariharan* referred *Meghachandra* to a Larger Bench for consideration of whether it was correctly decided.

20.3 One of the submissions made before us, as well as before the learned Tribunal, was that the resolution of the present dispute should be adjourned *sine die* awaiting the outcome of a larger Bench of the Supreme Court in *Hariharan*. Before we address this submission, it is worthwhile to reproduce paras 33 to 36 and 38 of *Hariharan*, thus:

“33. The argument made before us is that the decision in the case of *K. Meghachandra* will have to be ignored on the ground that it is *per incuriam* as the attention of the Bench which decided the case was not invited to the binding decisions of the Constitution Bench in the case of *Mervyn Coutindo* and a Coordinate Bench in the case of *M. Subba Reddy*. *Prima facie*, we find substance in the argument that the attention of the Bench which decided the case of *K. Meghachandra* was not invited to the aforesaid binding precedents. Therefore, we are of the view that the appropriate course of action will be to refer the question to a larger Bench. We are dealing with a case where the ‘rotation of quota’ or rota and quota system is being followed. If the promotees are recruited in the relevant recruitment year, but the process of recruitment of the direct recruits which commenced in the same recruitment year could not be completed in the same year, the

²³ 1966 SCC OnLine SC 13

²⁴ (2004) 6 SCC 729



direct recruits appointed subsequently will have to be interspaced between the promotees of the same recruitment year. In such a case, it cannot be said that direct recruits were not available during the recruitment year. Their appointment could not be made during the same year, though the process of appointment commenced in the same year. But, if the process of recruitment of the direct recruits is completed in the same recruitment year but an adequate number of candidates could not be selected, the shortfall should be carried forward to the next recruitment year. In such cases, the candidates who are selected against shortfall vacancies will have to be bunched below the promotees of the earlier years. Unless such a procedure is followed, the rotation of quota system will be defeated.

34. Coming to the facts of the case, though process of recruitment of direct recruits to the post of Income Tax Inspectors commenced in the recruitment year 2009-2010, the same could not be completed in the same recruitment year. This is not a case where an adequate number of direct recruits could not be recruited even though the recruitment was done in the recruitment year itself. In this case, those who were eligible for direct recruitment were deprived of the opportunity as the process of recruitment could not be completed during the same recruitment year 2009-2010 due to no fault on their part. The documents annexed to the counter affidavit show that the segregation of vacancies for 2009-2010 and 2010-2011 has been properly made.

35. In any event, the decision in the case of **K. Meghachandra** has a prospective operation. *The seniority list of 7th September 2016 was made in terms of the decision in the case of N.R. Parmar. Hence, the same could not have been altered on 13th February 2018 when the said decision was in force.*

36. Thus, our conclusion can be summarised as under:

i. The decision in the case of **K. Meghachandra** requires reconsideration by a larger Bench in view of the fact that the binding decision of a Constitution Bench in the case of **Mervyn Coutindo** and another binding decision of a Coordinate Bench in the case of **M. Subba Reddy** were not placed for consideration before the Bench which decided the case of **K. Meghachandra**;

ii. Even assuming that the case of **K. Meghachandra** was correctly decided, paragraph 39 of the decision shows that the decision in the case of **N.R.**



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Parmar has been prospectively overruled by observing that the decision will not affect the inter-se-seniority already fixed on the basis of the case of **N.R. Parmar** and the same was protected. It is also held that the decision will apply prospectively except where seniority is to be fixed under the relevant Rules from the date of vacancy/the date of advertisement. In this case, as on the date when the case of **N.R. Parmar** was decided, there was no rule which required that the inter-se-seniority of direct recruits and promotees to the post of Income Tax Inspectors should be fixed from the date on which a person is born in the cadre. In the facts of the case, the seniority list was correctly published on 7th September 2016 in terms of the decision in the case of **N.R. Parmar** by interspacing those direct recruits who were eligible in the recruitment year 2009-2010 and were appointed against the vacancies of the said year with 53 promotees who were promoted vide DPC dated 29th June 2009. The seniority list was later on modified on 13th February 2018 without giving an opportunity of being heard to the affected direct recruits.

38. Hence, we pass the following order:

i. We are of the considered view that the following questions need to be decided by a larger Bench of five Hon'ble Judges:

a. Whether the decision in the case of **K. Meghachandra** can be said to be a binding precedent in the light of the law laid down by the Constitution Bench in the case of **Mervyn Coutindo** and the law laid down by a Coordinate Bench in the case of **M. Subba Reddy**?

b. In absence of specific statutory rules to the contrary, when the 'rotation of quota' rule is applicable, whether the seniority of direct recruits who were recruited in the recruitment process which commenced in the relevant recruitment year but ended thereafter, can be fixed by following 'rotation of quota' by interspacing them with the direct recruits of the same recruitment year who were promoted earlier during the same year?



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ii. We direct the Registry to place this petition before Hon'ble the Chief Justice of India for appropriate orders.

iii. The interim relief granted on 13th July 2018 stands vacated. Effect shall be given to the impugned judgment subject to the final outcome of this appeal or reference, as the case may be. We also clarify that the seniority of promotees and direct recruits who may be appointed hereafter will be subject to the final outcome of the decision of this appeal or the decision in reference, as the case may be. Accordingly, concerned persons shall be informed in writing by the Income Tax Department.”

20.4 While *Hariharan*, undoubtedly, expresses certain doubts regarding the correctness of *Meghachandra*, *inter alia* for the reason that the attention of the *Meghachandra* Bench had not been invited to the decision in *Mervyn Coutindo* and *M Subba Reddy*, there is no categorical disapproval of the decision in *Meghachandra*. Indeed, the Supreme Court has, in para 36(ii) also mooted the possibility of *Meghachandra* having been correctly decided. No case, therefore, exists, at present, for the adjudication of the present petition to be kept pending, awaiting the constitution of a Larger Bench and the decision on the questions framed in *Hariharan*.

20.5 That apart, the Supreme Court has, in its recent decision in *Union Territory of Ladakh v Jammu & Kashmir National Conference*²⁵ held that the mere fact that an issue may have been referred to a larger Bench cannot justify the High Court adjourning the dispute before it, *sine die*, or awaiting the decision of the larger Bench. The Supreme Court has held that it is the duty of the High Court to follow the decision which binds at that point of time. Where the High

²⁵ 2023 SCC OnLine SC 1140



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Court is faced with contradictory decisions of Coordinate Benches of the Supreme Court, it has further been held that the decision rendered earlier in point of time would bind. We, of course, are not faced with this last eventuality in the present case.

The sequitur

21. While, therefore, the respondents' plea that the proceedings should be adjourned *sine die* was rightly not acceded to by the learned Tribunal, ***Hariharan*** to one extent actually supports the petitioner's case. Having held that ***Meghachandra*** might warrant a reconsideration, ***Hariharan*** notes that, in any case, to the facts before the Supreme Court, that issue would not arise, as ***Meghachandra*** was expressly made prospective. The observation of the Supreme Court in this regard is significant, and merits repetition:

“35. In any event, the decision in the case of ***K. Meghachandra*** has a prospective operation. *The seniority list of 7th September 2016 was made in terms of the decision in the case of N.R. Parmar. Hence, the same could not have been altered on 13th February 2018 when the said decision was in force.*”

(Emphasis supplied)

Later, in para 36 (ii), the Supreme Court notes:

“In the facts of the case, the seniority list was correctly published on 7th September 2016 in terms of the decision in the case of ***N.R. Parmar*** by interspersing those direct recruits who were eligible in the recruitment year 2009-2010 and were appointed against the vacancies of the said year with 53 promotees who were promoted vide DPC dated 29th June 2009. The seniority list was later on modified on 13th February 2018 without giving an opportunity of being heard to the affected direct recruits.”



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Thus, **Meghachandra** was held not to impact the resolution of the dispute before the Supreme Court, in **Hariharan**, as *the Seniority List had been published on 7 September 2016*, when **Parmar** held the field. The date of publication of the Seniority List, therefore, is, even as per **Hariharan**, of significance in assessing whether the caveat, in the concluding sentences in para 39 of **Meghachandra** would, or would not, apply. If the Seniority List was prepared and in place before **Meghachandra** was rendered, it was saved. *No Seniority List could, however, be prepared after Meghachandra was rendered, otherwise than in accordance with Meghachandra.* **Parmar** had, by then, overstayed its welcome.

22. The situation may be viewed from another, and far more elementary, angle. There can never be justification for following a judgment which was declared to be bad law. If, however, the petitioners' contentions are to be accepted, that would be the precise consequence. The petitioners effectively seek to contend that, even after having declared, in so many words, **Parmar** to have been incorrectly decided, and *in fact after having expressly overruled it*, the Supreme Court nonetheless allowed the petitioners to fix seniority, even after its judgment, in terms of **Parmar**. This is completely unacceptable. The persons whose *inter se* seniority was being fixed is totally immaterial. The judgment of the Supreme Court in **Meghachandra** cannot be understood to have permitted the petitioners to follow a judgment which **Meghachandra** itself expressly overruled.



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Ergo ...

23. Undoubtedly, therefore, the present case has to be decided on the basis of *Meghachandra*.

24. There is no dispute that the seniority lists issued by the ICAR on 20 September 2021, 17 January 2022 and 13 October 2022 had been issued by applying the quota-rota principle and following the law in *Parmar*. There is equally no dispute about the fact that they were issued after *Meghachandra* stood decided and rendered.

25. The only contention of the ICAR is that the seniority lists were correct in law as Respondents 1 to 4 and Respondents 7 to 29 had all been appointed between the dates when *Parmar* and *Meghachandra* came to be rendered. We have found this contention to be unacceptable in law.

26. We find no error whatsoever in the approach of the learned Tribunal. The petitioners' case is that as the respondents had been promoted/directly recruited to posts of Assistant between the rendition of the judgments in *Parmar* and *Meghachandra*, their seniority would have to be fixed as per the decision in *Parmar*. We cannot subscribe to this view. Once the decision in *Meghachandra* stood rendered and once *Meghachandra* had clearly held that *Parmar* was wrongly decided, there can be no question of the seniority being fixed on the basis of *Parmar*.



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27. Had the seniority list in the grade of Assistant been drawn up between the decisions of *Parmar* and *Meghachandra*, the petitioner may have had a case to state that the seniority as contained in the said seniority list deserved protection. In fact, however, no seniority list in the grade of Assistant was drawn up between *Parmar* and *Meghachandra*. The first seniority list which came to be drawn up was on 20 September 2021, which was after the decision in *Meghachandra* had been rendered.

28. The learned Tribunal has held that once the decision in *Meghachandra* was rendered, there could be no question of petitioners applying the earlier incorrect law in *Parmar*. We find nothing exceptionable whatsoever in the said reasoning.

Conclusion

29. There is, therefore, no cause for us to interfere with the impugned judgment of the learned Tribunal, which is upheld in its entirety.

30. The petition is, accordingly, dismissed in *limine*.

C.HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J

OCTOBER 7, 2024/yg/ar

Click here to check corrigendum, if any