



2024:DHC:9979



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

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Date of Decision: 24th December, 2024+ **W.P.(C) 7524/2013****K.K. SONI & ORS**

.....Petitioners

Through: Mr. Naresh Kaushik, Senior Advocate
with Mr. Anand Singh, Mr. Shantanu Shukla and
Mr. Akshat Agrawal, Advocates.

versus

UNION OF INDIA & ORS

.....Respondents

Through: Ms. Anjana Gosain, Mr. Nippun
Sharma and Mr. Devesh Khanagwal, Advocates
for Respondent No.1.

Mr. Digvijay Rai, Mr. Archit Mishra, Mr. Rohit
Kumar Munjral, Mr. Raghiv Ali Khan, Advocates
with Mr. Yatinder Choudhary, Law Officer, for
Respondent No.2/AAI.

Mr. Sagar Saxena, Mr. Sarthak Pandey and Ms.
Saahila Lamba, Advocates for private
Respondents.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J.****CM APPL. 12000/2024**

1. This is an application for impleadment of the applicant as Respondent No. 259.
2. For the reasons stated in the application, the same is allowed and disposed of.



W.P.(C) 7524/2013 and CM APPL. 2216/2014

3. This writ petition has been preferred on behalf of the Petitioners under Articles 226 and 227 of the Constitution of India, laying a siege to seniority list of Managers ('ATC') dated 11.01.2011 as also seeking issuance of a writ of mandamus to Respondent No.2/Airports Authority of India ('AAI') to re-cast the seniority list in the ratio of 3:1 as per Section-II, Clause 6.1(i) and Section-IV, Clause 21(ii) and Clauses 30.1.7 to 30.1.10 of Airports Authority of India (Recruitment and Promotion) Regulations, 2005 ('2005 Regulations') related to General Principles of Seniority, with consequential benefits.

4. To the extent relevant for the adjudication of this writ petition, the facts as emerging from the writ petition are that AAI invited applications for filling up posts of Manager (ATC) and the notified vacancies as per Advertisement No.2/2007 dated 07.10.2007 were 68. Written examination was conducted on 09.11.2008 followed by interviews, between July and August, 2009. Final result was declared on 01.12.2009, whereby Petitioners were declared successful and they joined in the year 2010 as direct recruit candidates. 68 vacancies notified by AAI included 55 vacancies for the year 2005 and 13 for the year 2006 as per the averment in the writ petition.

5. In the meantime, promotions were made by AAI and 67 Assistant Managers (ATC) were promoted to the post of Manager (ATC) on 17.08.2005; 50 were promoted on 01.12.2006; 23 were promoted on 23.06.2007; 29 were provisionally promoted on 08.11.2007, subject to final decision by the inter-se Seniority Committee; 42 were promoted on 03.04.2008; 159 were promoted on 22.05.2009; and 6 were promoted on 24.12.2009, i.e. before Petitioners joined as direct recruits.



6. On 11.01.2011, seniority list was circulated wherein Petitioners were placed below the promotees, which according to the Petitioners was erroneous and without carrying out the exercise of interspersing departmental promotees and direct recruits in 3:1 ratio as per 2005 Regulations and overlooking the fact that the direct recruitment process had commenced in the year 2007. Second seniority list was issued on 23.03.2012, wherein Petitioners were again placed below the promotees. Being aggrieved, one of the Petitioners made a representation on 01.02.2012 to rectify seniority list dated 11.01.2011 in the ATC discipline in accordance with 2005 Regulations, but there was no response or action. Third seniority list was issued on 15.01.2013, but the seniority position was maintained despite the representation, constraining the Petitioners to approach this Court in 2013. Be it noted that in the present writ petition challenge is laid only to seniority list dated 11.01.2011.

7. Mr. Naresh Kaushik, learned Senior Counsel for the Petitioners argued that as per Clause 6.1(i) of Section-II and Clause 21(vii) of Section-IV of 2005 Regulations, 25% posts of Manager (ATC) [E-3 Level] are to be filled through direct recruitment and though AAI earmarked 55 vacancies for direct recruitment for the year 2005 and 13 for the year 2006, the notification to fill up 68 vacancies was published only in 2007 and even thereafter due to administrative delays, the recruitment process was completed only in the year 2010 and as a consequence, no Manager (ATC) was recruited between 2005-2009 from the direct recruitment quota. This according to Mr. Kaushik not only violates the applicable Regulations but also the rota-quota rule, which is an integral part of the 2005 Regulations.



8. It was submitted that Clause 30 in Section-IV of 2005 Regulations regulates and lays down general principles of seniority between promotees and direct recruits. Clause 30.1.7 provides that relative seniority of direct recruits and promotees shall be determined according to roster/rotation of vacancies between the two modes based on quota of vacancies reserved for that year. Clause 30.1.8 provides that to the extent direct recruits are not available in any particular year, promotees will be bunched together at the bottom of the seniority list below the last person from direct recruitment. Clause 30.1.9 mandates that unfilled direct recruitment quota vacancies will be carried forward and added to direct recruitment vacancies of the next year and Clause 30.1.10 stipulates that additional direct recruits selected against carried forward vacancies of previous year would be placed *en bloc* below the last promotee in the seniority list based on rotation of vacancies in that year. However, seniority list has been prepared by AAI in total violation of these Regulations.

9. It was further argued that DoPT issued O.M. dated 03.07.1986 wherein consolidated instructions on seniority of direct recruits and promotees were laid down in paragraph 2.4.1 providing that relative seniority of direct recruits and promotees shall be determined according to rotation of vacancies between them, which in turn will be based on quota of vacancies reserved for both categories respectively, however, these instructions have not been followed while determining the seniority between the Petitioners and private Respondents, who are the promotees in the impugned seniority list.

10. Mr. Kaushik strenuously argued that impugned seniority list is also in the teeth of the judgment of the Supreme Court in *Union of India and*



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Others v. N.R. Parmar and Others, (2012) 13 SCC 340, wherein the Supreme Court was examining DoPT O.Ms. dated 07.02.1986, 03.07.1986 and 03.03.2008 and held that ‘rotation of quotas’ principle would be fully applicable to the direct recruits and they will have to be interspaced with promotees of the same year. It was observed that it is not necessary that direct recruits should join within the recruitment year during which vacancies have arisen and date of joining would not be a relevant factor for determining their seniority. It would suffice if the action has been initiated for direct recruit vacancies within the recruitment year in which the vacancies became available and this is because delay in administrative action cannot deprive an individual of his due seniority. In light of this binding dictum, Petitioners must be granted seniority in the post of Manager (ATC) from 2007, when the advertisement was issued and the recruitment process for appointment of direct recruits commenced. This is more so because the 2005 Regulations pertaining to determination of *inter se* seniority between direct recruits and promotees are identical to the principles laid down in DoPT O.Ms. dated 07.02.1986 and 03.07.1986, on which the judgment of ***N.R. Parmar (supra)*** was based. In fact, after the judgment in ***N.R. Parmar (supra)***, DoPT issued O.M. dated 04.03.2014 laying down certain principles for determination of *inter se* seniority between direct recruits and promotees and it was categorically mentioned that the recruitment year would be the year of initiating the recruitment process against a vacancy year and initiation of recruitment process for any of the modes would be deemed to be initiation of recruitment process for the other mode as well. The action of AAI in reckoning the seniority of the Petitioners from 2010 is thus, wholly flawed.



11. Mr. Kaushik further argued that no doubt, in *K. Meghachandra Singh and Others v. Ningam Siro and Others*, (2020) 5 SCC 689, a three-Judge Bench of the Supreme Court has overruled the decision in *N.R. Parmar (supra)* but in *Hariharan and Others v. Harsh Vardhan Singh Rao and Others*, 2022 SCC OnLine SC 1717, judgement in *K. Meghachandra (supra)* was referred to a Larger Bench, expressing doubts on its correctness *inter alia* for the reason that attention of the Supreme Court in *K. Meghachandra (supra)* was not invited to the decisions in *Mervyn Coutindo and Others v. Collector of Customs, Bombay and Others*, 1966 SCC OnLine SC 13, and *M. Subba Reddy and Another v. A.P. State Road Transport Corporation and Others*, (2004) 6 SCC 729. It was urged that the Supreme Court in *K. Meghachandra (supra)*, categorically observed that this decision will not affect the *inter se* seniorities fixed earlier on *N.R. Parmar (supra)* and they will be protected. It was also held that the decision will apply prospectively, except where seniority is to be fixed under the relevant rules from the date of vacancy or the date of advertisement and therefore, the seniority list impugned herein must be regulated by the principles laid down in *N.R. Parmar (supra)* and consequently, direction be issued to AAI to recast the impugned seniority list following the said judgment.

12. Mr. Digvijay Rai, learned counsel appearing for AAI *per contra* submitted that the advertisement inviting applications for direct recruitment to the post of Manager (ATC) was issued in 2007 but the selection process was completed in 2010. The selected candidates, including the Petitioners, joined AAI only in the year 2010 and their seniority was fixed in accordance with 2005 Regulations basis their date of joining. There was no delay on the



part of AAI in concluding the recruitment process, inasmuch as the advertisement was on All-India basis and the process involved written test, interview and verification of documents. Petitioners are seeking seniority from 2007, which is impermissible as they were not even borne in the cadre in the said year and no reliance can be placed either on the judgment of the Supreme Court in *N.R. Parmar (supra)* or the DoPT O.Ms. dated 07.02.1986 and 03.07.1986, in view of the fact that the said judgment has been overruled in *K. Meghachandra (supra)* with an observation that in *N.R. Parmar (supra)* the said O.Ms. were not properly construed by the Supreme Court and if read correctly, as per the said O.Ms., seniority of direct recruits can be reckoned only from the date of appointment and not the date of initiation of recruitment process. Moreover, the DoPT O.Ms. are not applicable to AAI in view of DoPT's own stand that seniority of officers working in PSUs/Autonomous bodies/Organisations/Banks are governed by Regulations/Instructions issued by concerned Administrative Department/PSUs/Banks etc. Since the seniority of direct recruits and promotees is to be fixed by 2005 Regulations, DoPT O.Ms. are inapplicable for the said purpose and cannot supplant the statutory regulations. Therefore, there is no legal infirmity in the impugned seniority list dated 11.01.2011.

13. Learned counsel for Respondent No.1/Union of India and learned counsels for the private Respondents, i.e. promotees, adopted the arguments canvassed on behalf of AAI and also made some additional submissions. It was argued that the private Respondents were promoted to the post of Manager (ATC) before the appointment and joining of the Petitioners to the said post. Clauses 30.1.7 to 30.1.10 of 2005 Regulations stipulate that relative seniority of direct recruits and promotees shall be determined



according to roster of vacancies between the two modes, based on quota of vacancies reserved for that year and to the extent direct recruits do not become available in any particular year, promotees will be bunched together at the bottom of the seniority list below the last person from direct recruitment and unfilled vacancies shall be carried forward. In the instant case, *albeit* the recruitment process through open advertisement was initiated in 2007, but Petitioners joined only in 2010 and cannot claim seniority from the date they were not even borne in the cadre. The impugned seniority list is in consonance with 2005 Regulations and the DoPT O.Ms. dated 07.02.1986 and 03.07.1986 are inapplicable to AAI for the purpose of fixing seniority, which is evident from the 'Frequently Asked Questions and Answers' ('FAQs'), wherein DoPT clarified that seniority of officers working in PSUs/Autonomous Bodies/Organisations/Banks will be governed by Regulations/Instructions issued by concerned Administrative Department/PSUs/Banks, etc. In this light, Petitioners can place no reliance on the judgment in *N.R. Parmar (supra)* also.

14. It was further argued that in the present case, direct recruit vacancies had arisen in 2005 and 2006 but the advertisement was issued only in 2007, unlike the case in *N.R. Parmar (supra)*, where the advertisement was issued by the Staff Selection Commission ('SSC') in the recruitment year, in which direct recruit vacancies had arisen. Moreover, in the present case, no delay can be attributed to AAI as the Petitioners as also the Association of Officers had opposed the recruitment process by sending various representations to cancel the recruitment process and had also filed a writ petition. Additionally, assuming the judgment in *N.R. Parmar (supra)* applies, setting aside of the impugned seniority list will result in re-opening of



seniority fixed in 2011 which will be in teeth of DoPT O.M. dated 04.03.2014, issued in furtherance and implementation of this judgement, clarifying that cases of seniority already settled will not be re-opened based on interpretation of the DoPT O.Ms. dated 07.02.1986 and 03.07.1986 prior to the judgement in *N.R. Parmar (supra)*.

15. Heard learned Senior Counsel for the Petitioners and learned counsels for the Respondents and examined their rival submissions.

16. Factual matrix is not disputed to the extent that the private Respondents, who are promotes, were promoted to the post of Manager (ATC) from the post of Assistant Manager (ATC) prior to 2010, the year in which Petitioners joined on the post of Manager (ATC) as direct recruits. It is equally undisputed that advertisement inviting applications through the mode of direct recruitment for 68 vacancies in the direct recruit quota was published on 07.10.2007. Out of the 68 vacancies, 55 vacancies were of the year 2005 and 13 pertained to the vacancy year 2006. The direct recruitment process included the written examination conducted on 09.11.2008, followed by interviews in 2009 and declaration of the final result on 01.12.2009 and concluded in the year 2010.

17. Petitioners are direct recruits and call upon this Court to set aside the impugned seniority list dated 11.01.2011 with a further direction to AAI to recast the seniority list after re-fixing the seniority between them and promotees. Broadly understood, the case of the Petitioners is that the vacancies advertised in 2007 included vacancies of the years 2005 and 2006 and once the recruitment process commenced in 2007, delay in conclusion of the same in 2010 on account of administrative issues, cannot place them at a disadvantage and thus they should be interspaced with the promotees of



the recruitment year in question in consonance with principles laid down for determining *inter se* seniority between direct recruits and promotes as laid down in Clauses 30.1.7 to 30.1.10 of 2005 Regulations read with DoPT O.Ms. dated 07.02.1986 and 03.07.1986 and more importantly, applying the law laid down by the Supreme Court in *N.R. Parmar (supra)*.

18. *Inter se* seniority disputes between direct recruits and promotees has been subject matter of several litigations and seem to be an unending phenomenon. Historically, in so far as DoPT O.Ms. are concerned, the general principles for determination of *inter se* seniority between direct recruits and promotees in Central Services were first laid in O.M. dated 22.12.1959, providing that the relative seniority shall be determined according to rotation of vacancies between direct recruits and promotees based on quotas of vacancies reserved for direct recruits and promotees respectively, as per rules. This is broadly and commonly referred to as the rota-quota principle. This implied that if for example under a given rule, the quota for filling up the direct recruit and promotion vacancies is 3:1, seniority will be fixed in the quota of 75%:25%, by rotating them.

19. On 07.02.1986, DoPT issued an O.M. to deal with an exigency where one of the quotas remained unfilled due to sufficient candidates not joining in the given recruitment year and for ease of reference, the O.M. is extracted hereunder:

“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 O.M. No. 9/11/55-RPS dated 22nd December 1959. According to Paragraph-6 of the said Annexure, the relative seniority of direct recruits and promotees shall be determined according to rotation of vacancies between the direct recruits and the



promotees, which will be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules. In the Explanatory Memorandum to these Principles, it has been stated that a roster is required to be maintained based on the reservation of vacancies for direct recruitment and promotion in the Recruitment Rules. Thus where appointment to a grade is to be made 50% by direct recruitment and 50% by promotion from a lower grade, the inter-se-seniority of direct recruits and promotees is determined on 1:1 basis.

2. *While the above mentioned 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 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 short-fall 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 judgement 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 benched together at the bottom of the seniority list, below the last position upto which it is possible to determine seniority on the basis of rotation of quotas with reference to the actual number of direct recruits who become available. The unfilled direct recruitment quota vacancies would, however, be carried forward and added to the corresponding direct recruitment vacancies of the next*



year (and to subsequent years where necessary) for taking action for direct recruitment for the total number according to the usual practice. Thereafter, in that year while seniority will be determined between direct recruits and promotees, to the extent of the number of vacancies for direct recruits and promotees as determined according to the quota for that year, the additional direct recruits selected against the carried forward vacancies of the previous year would be placed en-bloc below the last promotee (or direct recruit as the case may be) in the seniority list based on the rotation of vacancies for that year. The same principle holds good in determining seniority in the event of carry forward, if any, of direct recruitment or promotion quota vacancies (as the case may be) in the subsequent years.

Illustration:

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 proforma enclosed.



5. *With a view to curbing any tendency of under-reporting/ suppressing the vacancies to be notified to the concerned authorities 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 22nd December, 1959 referred to above, may be deemed to have been modified to that extent.*

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

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

20. This O.M. was followed by another DoPT O.M. dated 03.07.1986, laying down consolidated guidelines for determination of *inter se* seniority between direct recruits and promotees as follows:

"2.4.1 The relative seniority of direct recruits and of promotee 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. [DPT OM No.35014/2/80-Estt.(D) dt.7.2.86].

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.”

21. Another O.M. was issued by DoPT on 03.03.2008 essentially clarifying the term ‘available’ in paras 2.4.1 and 2.4.2 of O.M. dated 03.07.1986 to mean both in case of direct recruits as well as promotees, for the purpose of fixation of seniority, the actual year of appointment after conclusion of selection process and completion of pre-appointment formalities. Relevant passages from the O.M. are as follows:

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

4. Cases of seniority already decided with reference to any other



interpretation of the term 'available' as contained in OM dated 3.7.1986 need not be reopened."

22. On 27.11.2012, the Supreme Court pronounced the judgment in **N.R. Parmar (supra)**. The controversy in the said case was an *inter se* seniority dispute between Income Tax Inspectors, with direct recruits and promotees pitted on opposite sides. All the four DoPT O.Ms. dated 22.12.1959, 07.02.1986, 03.07.1986 and 03.03.2008 were examined by the Supreme Court and it was held that the principles for determining the *inter se* seniority between direct recruits and promotees laid down in O.M. dated 07.02.1986 and compilation of instructions in O.M. dated 03.07.1986 leave no doubt that "rotation of quotas" principle will have to be followed in the present case and direct recruits will have to be interspaced with promotees of the same recruitment year. It was held that date of joining of a direct recruit would not be a relevant factor for determining his seniority as in a given case a direct recruit may not necessarily join in the given recruitment year and it would suffice, if action has been initiated within the recruitment year in which vacancies had become available, since delay in administrative action in completing the recruitment process cannot deprive an individual of his due seniority. Relevant paragraphs are as follows:

"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. As such, initiation of action for recruitment within the recruitment year would be sufficient to assign seniority to the appointees concerned in terms of the "rotation of quotas" principle, so as to arrange them with other appointees (from the alternative source), for vacancies of the same recruitment year.



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44. In our view, what needs to be kept in mind while determining an answer to the aforesaid queries is that the OM dated 7-2-1986 is in the nature of an amendment/modification. The Department of Personnel and Training consciously “amended” the earlier OM dated 22-12-1959, by the later OM dated 7-2-1986. The said amendment was consciously carried out, with the object of remedying the inappropriateness of direct recruits of later years becoming senior to promotees with long years of service. It is not the case of any of the parties before us, that the OM dated 7-2-1986, has ever been “amended” or “modified”. It is therefore imperative to conclude that the OM dated 7-2-1986 is binding for the determination of the issues expressed herein, and that, the same has the force of law. The OM dated 3-7-1986 is in the nature of consolidatory instruction, whereby, all earlier instructions issued from time to time were compiled together. This is apparent not only from the subject of the aforesaid OM dated 3-7-1986, but also, the contents of Para 1 thereof. Para 1 of the OM dated 3-7-1986, is being reproduced hereunder:

“Dated 3-7-1986

Office Memorandum

Subject: Seniority — Consolidated orders on

The undersigned is directed to say that instructions have been issued by this Department from time to time laying down the principles for determining seniority of persons appointed to services and posts under the Central Government. For facility of reference, the important orders on the subject have been consolidated in this office memorandum. The number and date of the original communication has been quoted in the margin so that the users may refer to it to understand fully the context in which the order in question was issued.”

(emphasis supplied)

It is therefore clear, that the OM dated 3-3-2008 is neither in the nature of an “amendment” nor in the nature of a “modification”. Since the OM dated 3-3-2008, is a mere “consolidation” or compilation of earlier instructions on the subject of seniority, it is not prudent to draw any inferences therefrom which could not be drawn from the earlier instruction/office memoranda being “consolidated” or compiled therein, or which is contrary thereto.

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46. A perusal of the OM dated 3-3-2008 would reveal that a reference to Paras 2.4.1 and 2.4.2 of the OM dated 3-7-1986 has been made therein. Thereupon, the meaning of the term “available” used in Para 2.4.2 [Ed.:



Set out above at p. 369a and also at 360f.] of the OM dated 3-7-1986 is statedly “clarified”. In view of the conclusion drawn in the foregoing paragraph, the said clarification must be deemed to be with reference not only to the OM dated 3-7-1986 but also the OM dated 7-2-1986. We have already noticed in an earlier part of the instant judgment, the essential ingredients of a “clarification” are that it seeks to explain an unclear, doubtful, inexplicit or ambiguous aspect of an instrument, which is sought to be clarified or resolved through the “clarification”. And that, it should not be in conflict with the instrument sought to be explained. It is in the aforesaid background, that we will examine the two queries posed in the preceding paragraph (para 43 herein). We have already analysed the true purport of the OM dated 7-2-1986 (in paras 25 and 26 hereinabove). We have also recorded our conclusions with reference to the OM dated 3-7-1986 wherein we have duly taken into consideration the true purport of Para 2.4.2 contained in the OM dated 3-7-1986 (in paras 27 to 29 hereinabove). The aforesaid conclusions are not being repeated again for the reason of brevity. We have separately analysed the effect of the OM dated 3-3-2008 (in paras 39 to 42 of the instant judgment). It is not possible for us to conclude that the position expressed in the earlier office memoranda is unclear, doubtful, inexplicit or ambiguous. Certainly not on the subject sought to be clarified by the OM dated 3-3-2008. A comparison of the conclusions recorded in paras 25 and 26 (with reference to the OM dated 7-2-1986) and paras 27 to 29 (with reference to OM dated 3-7-1986) on the one hand, as against the conclusions drawn in paras 40 to 42 (with reference to OM dated 3-3-2008) on the other, would lead to the inevitable conclusion that the OM dated 3-3-2008 clearly propounds a manner of determining inter se seniority between direct recruits and promotees, by a method which is indisputably in conflict with the OMs dated 7-2-1986 and 3-7-1986.

47. Of course, it was possible for the Department of Personnel and Training to “amend” or “modify” the earlier office memoranda, in the same manner as the OM dated 7-2-1986 had modified/amended the earlier OM dated 22-12-1959. A perusal of the OM dated 3-3-2008, however reveals, that it was not the intention of the Department of Personnel and Training to alter the manner of determining inter se seniority between promotees and direct recruits, as had been expressed in the OMs dated 7-2-1986 and 3-7-1986. The intention was only to “clarify” the earlier OM dated 3-7-1986 (which would implicitly include the OM dated 7-2-1986). The OM dated 3-3-2008 has clearly breached the parameters and the ingredients of a “clarification”. Therefore, for all intents and purposes the OM dated 3-3-2008, must be deemed to be non est to the extent that the same is in derogation of the earlier OMs dated 7-2-1986 and 3-7-1986. Having so concluded, it is natural to record, that as the position presently stands, the OMs dated 7-2-1986 and 3-7-1986 would have an overriding



effect over the OM dated 3-3-2008 (to the extent of conflict between them). And the OM dated 3-3-2008 has to be ignored/omitted to the extent that the same is in derogation of the earlier OMs dated 7-2-1986 and 3-7-1986.

48. In the light of the conclusions recorded hereinabove, we are satisfied that the OM dated 3-3-2008 is not relevant for the determination of the present controversy.

xxx

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xxx

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

23. In implementation of the judgment in **N.R. Parmar (supra)** and to give effect to it, DoPT issued an O.M. dated 04.03.2014, laying down the principles to determine *inter se* seniority of direct recruits and promotees. It was, however, clarified in paragraph 5(h) and (i) that the principles laid down would be effective from 27.11.2012, i.e. the date of judgement in **N.R. Parmar (supra)**, with a conscious caveat that cases of seniority already settled with reference to applicable interpretation of the term ‘available’ occurring in DoPT O.Ms. dated 07.02.1986 and 03.07.1986, may not be



reopened. It was directed that it will be incumbent upon all administrative authorities to ensure that recruitment process is initiated during the vacancy year itself. Relevant paras are as follows:

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

a) DoPT OM No. 20011/1/2006-Estt.(D) dated 3.3.2008 is treated as non-existent/withdrawn ab initio;

b) The rotation of quota based on the available direct recruits and promotees appointed against the vacancies of a Recruitment Year, as provided in DOPT OM. dated 7.2.1986/3.07.1986, would continue to operate for determination of inter se seniority between direct recruits and promotees;

c) The available direct recruits and promotees, for assignment of inter se seniority, would refer to the direct recruits and promotees who are appointed against the vacancies of a Recruitment Year;

d) Recruitment Year would be the year of initiating the recruitment process against a vacancy year;

e) Initiation of recruitment process against a vacancy year would be the date of sending of requisition for filling up of vacancies to the recruiting agency in the case of direct recruits; in the case of promotees the date on which a proposal, complete in all respects, is sent to UPSC/Chairman-DPC for convening of DPC to fill up the vacancies through promotion would be the relevant date.

f) The initiation of recruitment process for any of the modes viz. direct recruitment or promotion would be deemed to be the initiation of recruitment process for the other mode as well;

g) Carry forward of vacancies against direct recruitment or promotion quota would be determined from the appointments made against the first attempt for filling up of the vacancies for a Recruitment Year;

h) The above principles for determination of inter se seniority of direct recruits and promotees would be effective from 27.11.2012, the date of Supreme Court Judgment in Civil Appeal No. 7514-7515/2005 in the case of N.R. Parmar Vs. UOI & Ors.

i) The cases of seniority already settled with reference to the



applicable interpretation of the term availability, as contained in DoPT OM. dated 7.2.86/3.7.86 may not be reopened.”

24. On 19.11.2019, a three-Judge Bench of the Supreme Court rendered the decision in ***K. Meghachandra (supra)***. The dispute before the Supreme Court was again an *inter se* seniority dispute between the direct recruits and promotees in the Manipur Police Service Grade-II Officers Cadre. The Appellants were direct recruits while respondents were promotees and writ Petitioners before the High Court. Promotees contended that they entered the MPS Grade-II Cadre on 01.03.2007, whereas direct recruits were appointed subsequently *albeit* in the same year and thus, Petitioners were senior to the direct recruits. On the other hand, direct recruits claimed seniority over the promotees contending that seniority has to be decided in accordance with the year of vacancy and not by the fortuitous date on which appointment was finalised and heavy reliance was placed on ***N.R. Parmar (supra)***. After examining the respective contentions and the MPS Rules, 1965 as also the DoPT O.Ms. dated 07.02.1986 and 03.07.1986, which were examined by the Supreme Court in ***N.R. Parmar (supra)***, the Supreme Court overruled the decision in the said case. It was observed that in ***N.R. Parmar (supra)***, both the O.Ms. were not properly construed and contrary to the eventual finding, the two O.Ms. in fact make it clear that seniority of direct recruits can be declared only from the date of appointment and not from the date of initiation of recruitment process. Be it noted that in the said case Government of Manipur had issued a final seniority list of MPS Grade-II Officers fixing the seniority on rota-quota basis which resulted in the direct recruits, who were recruited after the promotees had joined, being placed senior to the promotees. When this list was challenged before the High



Court, the learned Single Judge accepted the stand of the promotees that they were entitled to seniority over the direct recruits who were appointed later and held that direct recruits could not claim seniority from the date they were not even borne in the cadre. Some of the direct recruits challenged the decision before the Division Bench but lost and the judgement of the learned Single Judge was upheld to the extent that direct recruits could not reckon their seniority from dates prior to their appointments. The judgment of the Division Bench was then challenged before the Supreme Court.

25. While overruling the decision in *N.R. Parmar (supra)*, the Supreme Court in *K. Meghachandra (supra)* made certain significant observations. It was observed that judgment in *N.R. Parmar (supra)* relating to Central Government employees could not automatically apply to Manipur State Police Officers as the service has its own Rules. It was further held that the Supreme Court in *N.R. Parmar (supra)* had incorrectly distinguished the long-standing seniority determination principles propounded in *Jagdish Ch. Patnaik and Others v. State of Orissa and Others, (1998) 4 SCC 456; Suraj Parkash Gupta and Others v. State of J&K and Others, (2000) 7 SCC 561; and Pawan Pratap Singh and Others v. Reevan Singh and Others, (2011) 3 SCC 267*, wherein it was clearly enunciated that under service jurisprudence seniority cannot be claimed from a date when an incumbent is not even borne in the cadre. However, while overruling *N.R. Parmar (supra)*, the Supreme Court held that the decision will not affect the *inter se* seniorities already fixed applying the principles laid down in *N.R. Parmar (supra)* and the judgement will apply prospectively, except where seniority is to be fixed under the relevant Rules from the date of vacancy/date of advertisement.



26. Therefore, there is no doubt that the decision of the Supreme Court in *N.R. Parmar (supra)* stands overruled with a caveat that *inter se* seniorities fixed and crystalised on the basis of *N.R. Parmar (supra)* will not be refixed and will be protected. I may add that in *Hariharan (supra)*, a two-Judge Bench of the Supreme Court has referred *K. Meghachandra (supra)* to a Larger Bench expressing some doubts on its correctness but the matter rests at this stage.

27. Before proceeding further, it be noted that the seniority list impugned in the present writ petition is dated 11.01.2011. This list was the final list wherein the seniority position of the Petitioners *qua* the promotee Respondents stood finalised and crystalized and thereafter two seniority lists were circulated in 2012 and 2013, only after which the Petitioners woke up to challenge the seniority list of 2011, having accepted the seniority position in 2011 and this by itself is a reason enough to dismiss the writ petition. Be that as it may, since legal issues have been raised I am dealing with them hereinafter.

28. The narrow controversy before this Court is whether seniority list dated 11.01.2011 is in consonance with Clauses 30.1.7 to 30.1.10 of 2005 Regulations, since it is a common ground between the parties that these Regulations govern the field insofar as determination of seniority between direct recruits and promotees is concerned in AAI. In fact, the grievance of the Petitioners is that these Regulations have not been correctly followed. For the ease of reference, relevant Clauses are extracted hereunder:-

“30.1.7 The relative seniority of direct recruits and of promotees shall be determined according to the roster/rotation of vacancies between the two modes based on quota of vacancies reserved, for that year.

30.1.8 If, to the extent the direct recruits do not become available in any



particular year, the promotees will be bunched together at the bottom of the seniority list below the last person from direct recruitment.

30.1.9 The unfilled direct recruitment quota vacancies will be carried forward and added to corresponding direct recruitment vacancies of the next year.

30.1.10 Additional direct recruits selected against the carried forward vacancies of previous year would be placed en-block below the last promotee in the seniority list based on the rotation of vacancies in that year.”

29. From a conjoint reading of the aforesaid Clauses, which govern the field, it is clear that relative seniority of direct recruits and promotees is to be determined as per roster of vacancies between the two modes based on quota of vacancies reserved for that year and to the extent direct recruits do not become available in a particular year, promotees will be bunched together at the bottom of the seniority list below the last person from the direct recruitment and the unfilled direct recruitment vacancy shall be carried forward. The additional direct recruits selected against the carried forward vacancies will be placed *en-bloc* below the last promotee in the seniority list. From a perusal of the seniority list as amplified by a chart filed by the Petitioners themselves to explain the fixation of seniority in the said list, it is clear that promotees from the years 2005 to 2009 were placed at seniority positions 4 to 366. In the year 2010, there were no promotions and the direct recruits including the Petitioners, who joined in the year 2010, were placed *en-bloc* below the promotees, who were promoted between 2005 to 2009, starting from serial number 367 to 431. Thus, the impugned seniority list is in consonance with Clauses 30.1.7 to 30.1.10 of 2005 Regulations. The list has been prepared following the settled law as propounded by the Supreme Court in ***Jagdish Ch. Patnaik (supra); Suraj***



Parkash Gupta (supra) and *Pawan Pratap Singh (supra)*, that no person can claim seniority from a date he was not borne in the cadre. Petitioners concededly joined in the year 2010 and cannot claim seniority from 2007 only because the recruitment process was commenced in the said year as this is not the position envisaged in Clauses 30.1.7 to 30.1.10 of 2005 Regulations.

30. There can be no quarrel with the proposition that in service jurisprudence wherever service rules occupy the field they must prevail and any Executive Instructions must be in consonance with the Rules but cannot conflict them. [*Ref. Ashok Ram Parhad v. State of Maharashtra 2023 SCC OnLine SC 265*]. Even in *K. Meghachandra (supra)*, the Supreme Court, while overruling the judgment in *N.R. Parmar (supra)* has clearly elucidated that in wake of the MPS Rules, 1965, the judgment in *N.R. Parmar (supra)* was not automatically applicable to Manipur State Police Officers. Following this principle of law, the Division Bench of this Court in *Jagmohan Vishwakarma and Others v. Union of India and Others, 2023 SCC OnLine Del 4494*, held that *inter se* seniority between direct recruits and promotees will have to be reckoned from the date of appointment in accordance with the applicable Rule 8 of CRPF Group-‘A’ (General Duty) Officers Recruitment Rules, 2001, as amended in 2010.

31. In the present case, 2005 Regulations govern the field and DoPT has itself clarified in the ‘Frequently Asked Questions and Answers’ (‘FAQs’), that seniority of officers working in PSUs/Autonomous Bodies/Organisations/Banks will be governed by Regulations/Instructions issued by concerned Administrative Department/PSUs/Banks, etc. Thus, the impugned seniority list can only be tested on the touchstone of Clauses 30.1.7 to



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30.1.10 of 2005 Regulations and DoPT O.Ms. relied upon by the Petitioners are inapplicable. Consequentially, the reliance and emphasis on the judgment in *N.R. Parmar (supra)* is misconceived *albeit* it may be reiterated for the sake of completeness that the said judgment has been overruled by the three-Judge Bench of the Supreme Court in *K. Meghachandra (supra)*, prospectively and a reference is pending before a larger Bench.

32. The impugned seniority list has been correctly made keeping the rota quota principle formulated in the applicable Regulations governing the field in AAI and the writ petition is accordingly dismissed, being bereft of merit.

33. Pending application also stands disposed of.

JYOTI SINGH, J

DECEMBER 24, 2024/B.S. Rohella/shivam