

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6152 OF 2024

Deepak Kumar & Ors.

.. Petitioners

Vs.

Union of India,
Through Ministry of Finance,
Department of Revenue & Ors.

.. Respondents

ALONG WITH

**INTERIM APPLICATION NO. 11295 OF 2025 IN WRIT PETITION NO. 6152 OF 2024
INTERIM APPLICATION NO. 11780 OF 2025 IN WRIT PETITION NO. 6152 OF 2024**

Dilip Kumar and Ors.

.. Applicants-Interveners

Pramod Sain and Ors.

.. Applicants-Interveners

ALONG WITH

WRIT PETITION NO. 18613 OF 2024

Principal Commissioner of
Customs (General), Mumbai Customs,
Zone-1, Mumbai & Ors.

.. Petitioners

Vs.

Deepak Kumar & Ors.

.. Respondents

...

Mr. Anil Singh, Additional Solicitor General i/by Mr. Aniruddha A. Garge, Advocates for the Petitioners in WP/18613/2024.

Mr. Ramchandra Apte, Senior Advocate, i/by Mr. Sagar Ambedkar, Ms. Jacinta Lobo Kadam, Advocates for Respondent No.1 in WP/6152/2024.

Mr. Ramesh Ramamurthy with Mr. Saikumar Ramamurthy, Ms. Seema Sorte and Mr. Aalim Pinjari, Advocates for the Petitioners in WP/6152/2024 and for the Applicants in IA/11295/2025 & IA/11780/2025 and for the Respondents in WP/18613/2024.

Mr. Rahul Walia i/by Mr. Puneet Pathak, Advocates for Respondent Nos.5 to 9, 12 & 15 in WP/6152/2024 and WP/18613/2024.

Mr. Vishwajeet V. Mohite, Advocate for Respondent Nos.10, 11, 13 and 14 in WP/6152/2024 and WP/18613/2024.

...

**CORAM : SHREE CHANDRASHEKHAR, C.J. &
GAUTAM A. ANKHAD, J.**

**RESERVED ON: 7th NOVEMBER 2025.
PRONOUNCED ON: 27th NOVEMBER 2025.**

PER, SHREE CHANDRASHEKHAR, C.J.:

In these writ petitions, the order dated 15th March 2024 in Original Application No. 991 of 2022 passed by the Central Administrative Tribunal, Mumbai Bench (in short, Tribunal) has been challenged. In OA No.991 of 2022 filed by Ashwani Kumar Anand and 10 other promotee Inspector (Examiner), co-employees Deepak Kumar, Deepak Keshri, Nitesh Chaudhary and Pasula Sravan who are the direct recruit Inspector (Examiner) were arrayed as the respondent nos.5 to 8. In the said OA, a challenge was laid to the seniority list dated 7th December 2021 and paragraph no. 7(iii) of the DoPT Office Memorandum (in short, OM) dated 13th August 2021. The seniority list dated 7th December 2021 was challenged primarily on the ground that the departmental Authority ignored the decision in “*K. Meghachandra Singh*”¹ and assigned seniority to the aforementioned four co-employees from a back date. The following reliefs were sought by them : -

“(a) This Hon’ble Tribunal may graciously be pleased to call for the records and proceedings which led to the issuance of impugned Seniority List dated 07.12.2021 i.e. Annx. “A1” and Para 7(iii) of the impugned DOPT Office Memorandum dated 13.8.2021 i.e. Annx. “A2” and after going through its propriety, legality and constitutional validity be pleased to quash and set aside impugned orders i.e. impugned Seniority List dated 07.12.2021 i.e. Annx. “A1” and Para 7(iii) of the impugned DOPT Office Memorandum dated 13.8.2021 i.e. Annx “A2” and accordingly order and direct the Respondents to interspace and rotate the Applicants for the purpose of seniority with the Direct Recruits SSC Batch joined in the Recruitment/Vacancy Year: 2016-2017 and persons who have joined after 31.3.2017 should be rotated

1. *K. Meghachandra Singh and Others v. Ningam Siro and Ors* (2020) 5 SCC 689

and placed only in the vacancy year 2017-2018.

(b) This Hon'ble Tribunal may graciously be pleased to hold and declare that Pra 7(iii) of the DOPT Office Memorandum dated 13.8.2021 are illegal and wrong and accordingly Order and direct the Respondents that as the seniority for the Recruitment Year 2015-2016 and 2016-2017 had not been determined and finalized till 19.11.2019 the same would be governed by the law laid down in the case of K. Meghachandra and Ors vs. Ningam Siroh and Ors. (2020) 5 SCC 689 i.e. dated 19.11.2019 and further declare that no Direct Recruits can get seniority from the date he was not borne/joined in the cadre/service.

(c) This Hon'ble Tribunal may graciously be pleased to hold and declare that persons joining after the Applicants in the post of Inspector (Examiner) cannot be placed and granted Seniority over the Applicants to prepare a proper and legal Seniority list granting and fixing Seniority only from the date when a person has joined the Respondent Department on the post of Inspectors (Examiners) and accordingly place them in appropriate Vacancy and Recruitment Year for the purpose of Seniority.

(d) Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case.

(e) Cost of this Original Application be provided for."

2. In its order dated 15th March 2024, the Tribunal noted that the seniority list for the post of Inspector (Examiner) *qua* the direct recruits and promotees who were parties before the Tribunal was not finalized till 19th November 2019. The Tribunal noted the objection raised on behalf of the private respondents that the applicants did not lodge any objection to the draft seniority list dated 11th November 2021 and held that *inter se* seniority of the applicants and the private respondents are required to be determined under the directions issued in "*K. Meghachandra Singh*". The Tribunal recorded the submissions of the parties and issued the following directions: -

"3. It is also not in dispute that relevant seniority list for the post of Inspector (Examiner) was not finalised till 19.11.2019. The direct recruits of the post of Inspector Examiner) for the vacancy years 2015-2016 had joined as such under the respondents by 26.12.2016. In view of such facts, it is not disputed that the seniority list of Inspector (Examiner) of Mumbai and Goa under the respondent Nos 2 and 3 for

the vacancy years 2015 and 2016 was required to be issued keeping in view the law laid down by the Hon'ble Apex Court in K. Meghachandra Singh and others vs. Ingam Siro and others, reported in (2020) 5 SCC 698, however, the impugned seniority list was not issued in consonance with the law laid down by the Hon'ble Supreme Court in K. Meghachandra Singh (supra).

4. Shri Rajpurohit, learned counsel appearing for the respondents has opposed the claim of the applicants. He has submitted that applicants were accorded opportunity to make representation(against the draft seniority dated 11.11.2021. However, they have chosen not to make any representation and they rushed to this Tribunal only against the impugned final seniority list. He has argued that in such facts and circumstances of the case, any interference in the impugned seniority list is not called for.

In opposition to the claim of the applicants, learned counsel for the respondents has further argued that in all other zones, the seniority of Inspector (Examiner) was finalized before the judgment of the Hon'ble Apex Court in the case of K. Meghachandra Singh (supra) and, therefore, while issuing the impugned seniority list for the post of Inspector (Examiner) under the respondent no.3, efforts were made to follow what has been done in other commissionerates of the respondents. However, he does not that seniority of the Inspector (Examiner) is independent and distinct of each commissionerate under the respondent no.2. He does not dispute that when the relevant seniority list under the respondent no.3 was not finalized before the law laid down by the Hon'ble Apex Court in the case of K. Meghachandra Singh (supra), the respondent no.3 was duty bound to follow the law of the land inasmuch as the respondent no. 1 has issued relevant circular to give effect to the judgment of the Hon'ble Supreme Court in the case of K. Meghachandra Singh (supra).

5. Learned counsel for the applicants has placed reliance on the order/judgement dated 9.2.2023 of the coordinate Bench of this Tribunal at Principal Bench in OA NO.1656/2022, titled Sandeep Rat and others vs. Union of India and others. Learned counsel for the applicants has argued that when the Tribunal in the case of Sandeep Rai (supra) has found that seniority list in the said OA was not issued in furtherance of the law laid down by the Hon'ble Supreme Court in the case of K. Meghachandra Singh (supra), this Tribunal has set aside the seniority list dated 17.6.2022 impugned in the said OA with a direction as in the Order/Judgment dated 9.2.2023. No other point has been argued.

6. In view of the aforesaid facts, the present OA is allowed with the following directions/ orders:-

“(i) The impugned seniority list issued vide No.F.No.II/(34)/26/2020 P&E dated 7.12.2021 is set aside;

- (ii) *The respondents are directed to consider and issue fresh seniority list in terms of the judgment of the Hon'ble Apex Court in the case of **K. Meghachandra Singh** (supra) and re-fix the seniority of the applicants vis-a-vis the private respondents and concerned batch;*
- (iii) *The applicants shall be entitled for consequential benefits in accordance with the rules and instructions on the subject; and*
- (iv) *The aforesaid exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this Order."*

3. Writ Petition No. 6152 of 2024 has been filed by Deepak Kumar, Deepak Keshri, Nitesh Chaudhary and Pasula Sravan. They are the direct recruit Inspector (Examiner). The petitioners state that the final seniority list of the Inspector (Examiner) was published on 29th January 2019 and by that time they had completed almost two years of service. This is their specific stand that on 29th January 2019, that is, the date when a final seniority list was published they were in service and entitled to get the benefits of the decision in "N.R.Parmar"² which was holding the field on that day and it was only when the decision in "*K. Meghachandra Singh*" was delivered on 19th November 2019 that the existing regime for fixing seniority has changed. Thereafter, the Government of India issued a Circular on 13th August 2021 to give effect to the decision in "*K. Meghachandra Singh*" whereunder it was provided that the direct recruits and the promotees who were appointed between 27th November 2012 and 18th November 2019 shall be governed under the OMs dated 7th February 1986 and 3rd July 1986 read with the OM dated 4th March 2014 provided their seniority was not finalized prior to 19th November 2019. Following this OM, a seniority list of the Inspector (Examiner) for Mumbai and Goa Customs was issued through the Circular dated 7th December 2021 for the vacancies of the year 2015 and 2016. The petitioners who are the direct recruit

2. *Union of India & Ors. v. N. R. Parmar & Ors.* (2012) 13 SCC 340

Inspector (Examiner) were included in the final seniority list above the private respondents who are the promotees and no objection was lodged by the private respondents before the cut-off date of 26th November 2021. The petitioners have pleaded that OA No.991 of 2022 was filed by the private respondents on 6th December 2022 without offering any reason for the delay of one year in approaching the Tribunal.

4. Writ Petition No. 18613 of 2024 is on behalf of the Union of India through its officers. In this writ petition, there are 15 respondents including the petitioners in Writ Petition No. 6152 of 2024; they are the respondent nos.1 to 4. The respondent nos. 5 to 15 are the contesting respondents in both the writ petitions and were the applicants before the Tribunal in Original Application No.991 of 2022. It is stated that the OMs dated 7th February 1986 and 3rd July 1986 determine *inter se* seniority of the direct recruits and promotees. The respondent nos.1 to 4 appeared in the Combined Graduate Level Examination-2015 for the post of Inspector of Customs (Examiner) and they were included in the select list dated 9th February 2016 and were issued provisional appointment letters on 9th March 2017. They tendered joining sometime in March/April 2017 and were on probation for two years till March 2019. In the meantime, a seniority list was published on 26th October 2018 wherein the respondent nos.1 to 4 were not included. After the decision in “*K. Meghachandra Singh*”, a circular dated 13th August 2021 was issued to give effect to the said judgment and, pursuant thereto, the Principal Commissioner of Customs (General), Mumbai Customs issued Circular No.40 of 2021 dated 7th December 2021 for the seniority list of the Inspector (Examiner) for the vacancy years 2015 and 2016 for the Mumbai and Goa Customs. Before that, a draft seniority list was published and

objections were invited but no objection thereto was raised by the respondent nos. 5 to 15 by the cut-off date, that is, 26th November 2021. The seniority list was, therefore, finalized and published on 7th December 2021. This is the stand taken by the Union of India that the direct recruits are covered under clause 7(iii) of the OM dated 13th August 2021 and their names were included in the seniority list dated 7th December 2021. In the meantime, the direct recruits and promotee Inspector (Examiner) were promoted to the post of Customs Appraiser Group “B”. However, in view of the review DPC held on 27th December 2021 for promotion to the post of Inspector (Examiner) for the vacancy years 2014, 2015 and 2016, a fresh promotion list was issued vide Establishment Office Order No.263 of 2021 dated 27th December 2021. Consequently, there was a change in *inter se* seniority between the direct recruits and promotees and a corrigendum dated 20th June 2022 was issued in respect thereto.

5. Mr. Ramesh Ramamurthy, the learned counsel for the petitioners in Writ Petition No. 6152 of 2024 submitted that a judgment has prospective effect except where it is specifically indicated in the judgment. The petitioners who qualified for appointment on the post of Inspector (Examiner) and were included in the select list dated 9th February 2016 shall not be affected by the decision in “*K. Meghachandra Singh*”. The Tribunal did not refer to the contentions raised on behalf of the petitioners and no reason has been given as to why the seniority list is incorrect. There is even no reference to the decision in “*N. R. Parmar*” which held the field when the recruitment for the years 2015 and 2016 had started. The learned counsel further submitted that a peculiar situation would arise by applying the decision in “*K. Meghachandra Singh*” inasmuch as the persons who were appointed in subsequent years would rank

senior to the petitioners. Therefore, the decision of the Tribunal to interfere with the seniority list dated 7th December 2021 cannot be countenanced in law.

6. Mr. Anil C. Singh, the learned Additional Solicitor General advanced his arguments by referring to the OMs and submitted that the department rightly followed its own OMs which are not interfered by the Tribunal. The learned Additional Solicitor General made a specific reference to “*Hariharan*”³ and submitted that the decision in “*K. Meghachandra Singh*” is under reference before a larger Bench and, thus, not a binding precedent.

7. *Per contra*, Mr. Rahul Walia, the learned counsel for the respondent nos.5 to 9, 12 and 15 laid a stress on the OMs dated 7th February 1986 and 3rd July 1986 and submitted that the seniority of the direct recruits shall be counted from the date of appointment and not from the date of initiation of the recruitment process. The learned counsel further submitted that the decision in “*N. R. Parmar*” has been expressly overruled and the Hon’ble Supreme Court has held in “*K. Meghachandra Singh*” that the long-standing seniority determination principles as propounded in “*Jagdish Ch. Patnaik*”⁴, “*Suraj Parkash Gupta*”⁵ and “*Pawan Pratap Singh*”⁶ were ignored in “*N. R. Parmar*”.

8. Supporting him, the learned counsel for the other private respondents submitted that the decision in “*N. R. Parmar*” must be ignored to determine *inter se* seniority between the rival parties.

9. After these writ petitions were heard on 9th September 2025,

3. *Hariharan & Others v. Harsh Vardhan Singh Rao & Others* 2022 SCC OnLine SC 1717

4. *Jagdish Ch. Patnaik & Ors. v. State of Orissa & Ors.* (1998) 4 SCC 456

5. *Suraj Parkash Gupta v. State of Jammu & Kashmir* (2000) 7 SCC 561

6. *Pawan Pratap Singh v. Reevan Singh* (2011) 3 SCC 267

Rule was issued and the matters were directed to be posted on 7th October 2025 for final hearing, the Customs Department issued Establishment Office Order No.223 of 2025 dated 9th September 2025. Under this Office Order, 19 Inspector (Examiner) were reverted to their feeder cadre in supersession of the earlier orders for their promotion in the grade of Appraiser, and the interveners/applicants were reverted to the post of Inspector (Examiner). Pramod Sain, Saurabh Singh, Rohit Raj, Rahul Sindhu, Pankaj Kumar and Piyush Singh who are among those 19 officers have filed Interim Application No. 11780 of 2025 in Writ Petition No. 6152 of 2024. Dilip Kumar, Sachin Yadav, Vikram Pratap Singh, Pradeep Kumar and Ankit Chauhan who are also included in the Office Order dated 9th September 2025 have filed Interim Application No. 11295 of 2025. The interveners/applicants are seeking an order from this Court staying operation of the said Office Order during pendency of this writ petition. The arguments of the learned counsels appearing for the parties were heard on 15th October 2025 and 7th November 2025.

10. One of the submissions of the learned Additional Solicitor General and Mr. Ramesh Ramamurthy, the learned counsel was that the matter may be sent back to the Tribunal for rehearing but after hearing the learned Additional Solicitor General and the learned counsels appearing for the parties, we decided not to opt for the easy course.

11. After the decision in “*N. R. Parmar*”, the DoPT issued the OM dated 4th March 2014 defining the recruitment year to mean the year in which the recruitment process is initiated and, that, the rotation of quota rule shall continue to operate for determination of *inter se* seniority between the direct recruits and the promotees. In “*K. Meghachandra Singh*”, an *inter se* seniority dispute had cropped

up between the direct recruits and the promotees in the Manipur Police Service, Grade-II Officers cadre. The promotees who were serving as the Inspector of Police came into MPS Grade-II cadre on 1st March 2007 on the basis of the recommendations of the Departmental Promotion Committee. Whereas, the directly recruited MPS Grade-II had joined the service on 14th August 2007 and 24th November 2007. Rule 28(i) of the Manipur Police Service Rules, 1965 provided that the seniority in the service shall be determined by the order in which the appointments are made to the service. Rule 28(iii) further provided that the seniority of the officer shall be counted from the date he was appointed to the service. The grievance of the direct recruits was that they were not assigned their seniority from the recruitment year and were victims of the administrative delays in finalization of the recruitment.

12. In “*K. Meghachandra Singh*”, the Hon’ble Supreme Court considered the judgment in “*N. R. Parmar*” and held as under : -

“34. The judgment in N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] is now to be considered in some detail as this is heavily relied on by the appellants' counsel. At the outset, it must however be cleared that the cited case had nothing to do with the MPS Rules, 1965 and that litigation related to the Income Tax Inspectors who were claiming benefits of various Central Government OMs (dated 22-12-1959, 7-2-1986, 3-7-1986 and 3-3-2008). The judgment was rendered in respect of the Central Government employees having their own Service Rules. The applicable Rules for the litigants in the present case however provide that the seniority in the service shall be determined by the order in which appointments are made to the service. Therefore, the memorandums concerned referred to in N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] which deal with general principles for determination of seniority of persons in the Central Government service, should not according to us, have any overriding effect for the police officers serving in the State of Manipur.

35. After the judgment in N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] was delivered, the Union of India issued the Office Memorandum on 4-3-2014 defining the

recruitment year to be the year of initiating the recruitment process against the vacancy year and that the rotation of quota, would continue to operate for determination of inter se seniority between direct recruits and promotees. This Memo was not made applicable to the State of Manipur till the issuance of the OM dated 21-12-2017, adopting the OM dated 4-3-2014 prospectively with effect from 1-1-2018. Significantly, the said OM specifically provided that "...appointments/promotions made before the issue of this OM will not be covered by this OM. The seniority already fixed as per existing rules followed earlier in the State prior to the issue of this OM may not be reopened." It was also specifically stated therein that "this OM will come into effect from 1-1-2018 with the publication in the Gazette...."

36. From the above, it is not only apparent that the above OM was only to be given prospective effect from 1-1-2018 but it contains an express acknowledgment that this was not the position prior to the issuance of the OM and that a different rule was followed earlier in the State. The conclusion is, therefore, inevitable that at least prior to 1-1-2018, direct recruits cannot claim that their seniority should be reckoned from the date of initiation of recruitment proceedings and not from the date of actual appointment.

37. When we carefully read the judgment in N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711], it appears to us that the referred OMs (dated 7-2-1986 and 3-7-1986) were not properly construed in the judgment. Contrary to the eventual finding, the said two OMs had made it clear that seniority of the direct recruits be declared only from the date of appointment and not from the date of initiation of recruitment process. But surprisingly, the judgment while referring to the illustration given in the OM in fact overlooks the effect of the said illustration. According to us, the illustration extracted in N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] 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 [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] 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 [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] to the effect that the selected candidate cannot be blamed for the administrative delay. In the same context, we may usefully refer to the ratio in Shankarsan Dash v. Union of India [Shankarsan Dash v. Union of India, (1991) 3 SCC 47 : 1991 SCC (L&S) 800], where it was held that even upon empanelment, an appointee does not acquire any right.

39. The judgment in N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] 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 [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] had incorrectly distinguished the long-standing seniority determination principles propounded in, inter alia, Jagdish Ch. Patnaik [Jagdish Ch. Patnaik v. State of Orissa, (1998) 4 SCC 456 : 1998 SCC (L&S) 1156], Suraj Parkash Gupta v. State of J&K [Suraj Parkash Gupta v. State of J&K, (2000) 7 SCC 561 : 2000 SCC (L&S) 977] and Pawan Pratap Singh v. Reevan Singh [Pawan Pratap Singh v. Reevan Singh, (2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481]. These three judgments and several others with like enunciation on the law for determination of seniority makes it abundantly clear that under service jurisprudence, seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre. In our considered opinion, the law on the issue is correctly declared in Jagdish Ch. Patnaik [Jagdish Ch. Patnaik v. State of Orissa, (1998) 4 SCC 456 : 1998 SCC (L&S) 1156] and consequently we disapprove the norms on assessment of inter se seniority, suggested in N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711]. Accordingly, the decision in N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] is overruled. However, it is made clear that this decision will not affect the inter se seniority already based on N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711] 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.”

13. The general principles of seniority were laid down in the OM dated 22nd December 1959 which provided under paragraph no. 6 as

follows :-

“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.”

14. The Government of India through the Ministry of Personnel, Public Grievances and Pension issued the OM dated 7th February 1986 whereunder it was provided that the promotions made in the government departments shall be treated as regular promotion only to the extent that the direct recruitment vacancies were reported to the recruiting Authorities on the basis of quota prescribed under the relevant Recruitment Rules. This clarification was necessary to curb the tendency of under-reporting or suppressing the vacancies for direct recruitment to be notified. It was, therefore, clarified that excess promotion, if any, beyond the promotional quota and impinging upon the direct recruitment vacancy shall be treated as *ad-hoc* promotion. For that purpose, a proforma of Vacancy Register for maintaining the record of vacancies from year to year was provided to be maintained by the government departments. Under the OM dated 22nd December 1959, it was provided that the relative seniority of the direct recruits and the promotees shall be determined according to the rotation of vacancies between the direct recruits and the promotees as per the Recruitment Rules. However, some abbreviations in working of the OM dated 22nd December 1959 crept in inasmuch as the direct recruits or the promotees came to be appointed against unfilled vacancies of the previous year in the subsequent examinations or selections and the government employees who were working in the grade on regular basis became juniors to them.

15. The relevant portions of the OM dated 7th February 1986 read as under:-

“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.”

16. The OM dated 3rd July 1986 which was issued soon thereafter provided that the relative seniority of the direct recruits and the promotees shall be determined according to the rotation of vacancies between them based on the quota of vacancies reserved for the direct recruitment and promotion under the Recruitment Rules. The relevant portions of the OM dated 3rd July 1986 read as under :-

“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 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 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.”

17. The concept of “rotation of quotas” has to be read into the Seniority Rules. Under this system, the *inter se* seniority between the promotees and the direct recruits is based on the “quota” and “rota” principle. The same principle has been incorporated under the OM dated 3rd July 1986. Under the instructions contained in paragraph no.2 of the OM dated 7th February 1986, the “rotation of quotas” principle has been given effect to in its letter and spirit except where the direct recruit vacancies have been filled up by the direct recruits of “later” years. That is to say, the posts earmarked for the direct recruits remained unfilled in the previous recruitment exercise and those vacancies were filled up through “later” examinations or selections. As per the previous practice under the OM dated 22nd December 1959, the selectees in the “later” examination or selection were given seniority over the promotees who were already in

the cadre. The OM dated 7th February 1986 was intended to remove this anomaly so that the direct recruits of the later years do not get unintended seniority over the promotees in the cadre. On a conjoint reading of both the OMs, it is clear that the direct recruits in a particular year would stand senior to the promotees who were assigned their slots in that particular recruitment year. To put it more clearly, even if adequate number of direct recruits were not available the promotees of the same year would be bunched together at the bottom of the seniority list. These principles are incorporated in the OM dated 13th August 2021, the paragraph no.7 of which contains the following modified instructions for the determination of *inter se* seniority:

“(i) DoPT’s O.M. No.20011/1/2012-Estt. (D) dated 4.3.2014, issued in pursuance of Order dated 27.11.2012 in N.R. Parmar case, is treated as non-est/withdrawn w.e.f. 19.11.2019.

(ii) As the Order dated 19.11.2019 is prospective, cases of inter se seniority of direct recruits and promotees, already decided in terms of O.M. No. 20011/1/2012-Estt.(D) dated 4.3.2014, shall not be disturbed, i.e. old cases are not to be opened.

(iii) In case of direct recruits and promotees appointed/joined during the period between 27.11.2012 and 18.11.2019 and in which case inter se seniority could not be finalised by 18.11.2019, shall also be governed by the provisions of O.Ms dated 7.2.1986/3.7.1986 read with OM dated 4.3.2014, unless where a different formulation/manner of determination of seniority has been decided by any Tribunal or Court.

(iv) For cases where the recruitment process has been initiated by the administrative Department/Cadre Authority before 19.11.2019 and where some appointments have been made before 19.11.2019 and remaining on or after 19.11.2019, the inter se seniority of direct recruits and promotees, shall also be governed by the provisions of O.Ms. Dated 7.2.1986/3.7.1986 read with OM dated 4.3.2014 to ensure equal treatment of such appointees.

(v) For recruitments initiated on or after 19.11.2019 as well as for future recruitments in addition to cases where the recruitment process has been initiated by the administrative Department Cadre Authority before 19.11.2019, but where all appointments, subsequent to the initiation of recruitment process, could be made only on or after

19.11.2019 i.e. date of order of Apex Court the inter se seniority of direct recruits and promotes shall be determined in the following manner-

(a) The rotation of quota based on the percentage of vacancies allocated to direct recruitment and promotion in the notified recruitment rules/service rules, shall continue to operate for determination of vacancies to be filled by the respective quotas in a recruitment year.

(b) Determination of inter-se seniority between direct recruits and promotees, who are appointed against the vacancies of respective quota would, however, be reckoned with reference to the year in which they are appointed i.e. year in which they are borne in the cadre or formal appointment order is issued. In case, where the recruitment year is the same as the year of appointment, the appointees shall be given seniority of that year.

(c) Where in case of promotees or direct recruits, the year of appointment is the next year or any year subsequent to the recruitment year, the seniority of such promotees and direct recruits would be determined with reference to the year of their actual joining/appointment to the post, since they were not able to join in the said recruitment year in which the vacancy arose. Thus, they would get seniority of the year in which they actually join i.e. year in which formal appointment order is issued or they are borne in the service cadre and that they shall not get seniority of any earlier year (viz. Year of Vacancypanel or year in which recruitment process is initiated).

(d) In terms of Oms dated 7.2.1986/3.7.1986, rotation between promotees and direct recruits for the purpose of determination of inter-se seniority would be undertaken only to the extent of available direct recruits and promotees in a particular year. The term 'available direct recruits or promotees' appearing in the Oms dated 7.2.1986/3.7.1986, for the purpose of rotation of quota in fixation of inter-se seniority, shall mean the actual number of direct recruits and promotees appointed during the year after declaration of results/selection and completion of pre-appointment formalities as prescribed.

(e) As per (d) above, if adequate number of direct recruits (or promotees) do not become available in a particular year, the "rotation of quotas" for the purpose of determining inter-se seniority, would stop after the available direct recruits and promotees are assigned their slots in their appointment/joining in that year.

(f) If no direct recruit is available in a particular year, available promotees would be bunched together in accordance with their position in the panel approved for promotion. Similarly, if no promotee is available in that year, available direct recruits would be bunched together, as per their position obtained in the selection process.

(g) In case, where direct recruits or promotees, as the case may be,

belonging to two more selections/panel approved for promotion, join in the same year, then those who have been appointed/joined as a result of earlier selection/panel would be placed senior in the seniority list to those been appointed/joined as a result of a subsequent selection/panel.

(h) Instructions contained in OMs dated 7.2.1986 and 3.7.1986, stand modified to the extent indicated in above paragraphs.”

18. In “*Mervyn Coutindo*”⁷, the Hon’ble Supreme Court held that an employee promoted to a higher grade gets his seniority in the grade as per his date of promotion. Such a government employee will rank in seniority from the date of his continuous service in the grade except where he is not found fit during probation. This issue of timeline before final recruitment is made has been discussed in “*Jagdish Ch. Patnaik*” wherein the Hon’ble Supreme Court held that a candidate cannot be said to be appointed on the basis of initiation of process of recruitment and he cannot be said to be borne in the cadre before the formal appointment order is issued. In “*K. Meghachandra Singh*”, the Hon’ble Supreme Court held that the decision in “*Jagdish Ch. Patnaik*” has been followed in subsequent decisions including “*Nani Sha*”⁸ wherein the Hon’ble Supreme Court approved the view that the seniority is to be reckoned not from the date when the vacancy arose but from the date from which the appointment is made to the post. In “*Pawan Pratap Singh*”, the Hon’ble Supreme Court held that the seniority should not be reckoned retrospectively unless it is so expressly provided by the relevant service rules. Following “*Pawan Pratap Singh*”, the Hon’ble Supreme Court observed that an employee who was not borne in the cadre cannot claim seniority over those who were appointed validly before him and if it is done so that may adversely affect the others who came in the cadre prior in time. In

7. *Mervyn Coutindo & Ors. v. Collector of Customs, Bombay & Ors.* 1966 SCC OnLine SC 13.

8. *Nani Sha & Ors. v. State of Arunachal Pradesh & Ors.* (2007) 15 SCC 406

“Ashok Kumar Srivastava ”⁹, the Hon’ble Supreme Court held as under:

“24. The learned Senior Counsel for the appellants has drawn inspiration from the recent authority in Pawan Pratap Singh v. Reevan Singh [(2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481] where the Court after referring to earlier authorities in the field has culled out certain principles out of which the following being the relevant are reproduced below: (SCC pp. 281-82, para 45)

“45. (ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.”

19. The offer of appointment (provisional) dated 9th March 2017 issued to the petitioners in Writ Petition No.6152 of 2024 indicated that the selectees will be on probation for two years and have to pass the prescribed departmental examination within two years from the date of their joining for receiving annual increment. The petitioners and the promotees were not recruited in the same year. They were not appointed in the same transaction and the petitioners were not borne in the cadre of Inspector (Examiner) on the date when the respondent nos. 5 to 15 got promoted and entered in the cadre of Inspector (Examiner) on 26th December 2016. The instructions under the OMs dated 7th February 1986 and 3rd July 1986 are the policy decisions of

9. State of Uttar Pradesh & Ors. v. Ashok Kumar Srivastava & Anr. (2014) 14 SCC 720

the government which govern the field of *inter se* seniority between the direct recruits and the promotee Inspectors (Examiner). This is necessary to maintain the rule of law as also in public interest that the binding decisions of the Court are followed by the subordinate Courts/Tribunals. The governing rules in the present case do not provide that the seniority should be counted from the date of vacancy or from the recruitment year. The decision in “*K. Meghachandra Singh*” has a prospective operation and the Hon’ble Supreme Court made it clear that; “*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*”. The observations in “*Hariharan*” shall not affect the direction issued by the Tribunal that the seniority of the rival Inspector (Examiner) should be determined in the light of “*K. Meghachandra Singh*”. The decision in “*K. Meghchandra Singh*” has been referred for reconsideration before a larger Bench but that can not be a ground not to follow “*K. Meghchandra Singh*”. This is necessary for continuity, certainty and productivity in the administration of justice that the decision in “*K. Meghchandra Singh*” is followed without awaiting a decision by the larger Bench in “*Hariharan*”. Merely because a doubt was raised and the decision in “*K. Meghchandra Singh*” has been referred to a larger Bench, a presumption cannot be raised that the larger Bench would take a contrary view and the decision in “*K. Meghchandra Singh*” shall be overruled. This is also not in the public interest that the administration of justice shall be put on hold awaiting a decision by the larger Bench in “*Hariharan*”. This is not in dispute that a seniority list was prepared in the light of the decision in “*N. R. Parmar*” the *inter se* seniority of the direct recruit and the promotee Inspectors (Examiner) who were parties in Original Application No.991 of 2022

was not finalised till the decision in “*K. Meghchandra Singh*”. This is also not in dispute that the seniority list of the government employees prepared following the decision in “*N. R. Parmar*” is saved only where the said seniority list was prepared prior to the decision in “*K. Meghchandra Singh*”. Therefore, on admitted facts, it shall not make any difference in the present case even though there is no finding recorded by the Tribunal as to validity of the instructions under paragraph no.7 (iii) of the OM dated 13th August 2021 which provided that: *“In case of direct recruits and promotees appointed/joined during the period between 27.11.2012 and 18.11.2019 and in which case inter se seniority could not be finalised by 18.11.2019, shall also be governed by the provisions of OMs dated 7.2.1986/3.7.1986 read with OM dated 4.3.2014, unless where a different formulation/manner of determination of seniority has been decided by any Tribunal or Court”*.

20. For the aforesaid reasons, Writ Petition Nos.6152 of 2024 and 18613 of 2024 are dismissed. Pending Interim Application Nos.11295 of 2025 and 11780 of 2025 are disposed of in terms of this order.

[GAUTAM A. ANKHAD, J.]

[CHIEF JUSTICE]