



2025:DHC:9395-DB



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

***Reserved on: 14 July 2025***

***Pronounced on: 28 October 2025***

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W.P.(C) 1571/2018

SANJAY KUMAR

.....Petitioner

Through: Mr. Vinay Kumar Garg, Sr.  
Adv. with Mr. Anshuman Mehrotra and Mr.  
Nikunj Arora, Advs.

versus

UNION OF INDIA & ORS

.....Respondents

Through: Mr. Rajesh Kumar, Sr. PC with  
Ms. Ojaswini Jain, Adv. for Union of India

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W.P.(C) 8796/2020, CM APPLs. 3718/2021 & 7089/2021

BRIJESH KUMAR RAI & ORS.

.....Petitioners

Through: Ms. Malvika Trivedi, Sr. Adv.  
with Mr. Kumar Mihir, Mr. Athul Joseph  
and Ms. Muskan Shayla, Advs.

versus

UNION OF INDIA THROUGH SECRETARY

MINISTRY OF HOME AFFAIRS & ORS.

.....Respondents

Through: Ms. Nidhi Raman, CGSC with  
Mr. Akash Mishra and Mr. Arnav Mittal,  
Advs. for Union of India

Mr. Ankur Chhibber, Adv. for R-31, R-125,  
R-127, R-162 & R-163

Mr. J. Sai Deepak, Sr. Adv. with Mr. Joby P  
Varghese, Mr. Navneet Soni, Mr. Aby P  
Varghese and Ms. Rashmi Goyal, Advs. for R-  
63 & R-103



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+ W.P.(C) 5247/2021, CM APPL. 46416/2024

UPENDRA KUMAR

.....Petitioner

Through: Ms. Malvika Trivedi, Sr. Adv.  
with Mr. Himanshu Gautam, Mr. Lokesh  
Sharma, Mr. Krishan Gautam, Ms.  
Anuradha Pandey, Ms. Niharika Punni and  
Ms. Sujal Gupta, Advs.

versus

UNION OF INDIA THROUGH SECRETARY

MINISTRY OF HOME AFFAIRS & ORS. ....Respondents

Through: Mr. Neeraj, Sr. PC with Mr.  
Vedansh Anand, GP and Mr. Rudra Paliwal,  
GP with Mr. Soumyadip Chakraborty, Adv.  
and Mr. Sanjay Pal, GP for Union of India  
Mr. Ankur Chhibber, Adv. for R-6

+ W.P.(C) 7064/2021

ACHYUT SINGH AND ORS.

.....Petitioners

Through: Mr. Ganesh A. Khemka, Mr.  
Shreenath A. Khemka and Ms. Vidhi Gupta,  
Advs.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr. Ruchir Mishra, Sr. PC with  
Mr. Mukesh Kumar Tiwari and Ms. Reba  
Jena Mishra, Advs. for Union of India

**CORAM:**

**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**HON'BLE MR. JUSTICE AJAY DIGPAUL**

**JUDGMENT**

**28.10.2025**

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**C. HARI SHANKAR, J.**

**The *lis***

1. These writ petitions are concerned with the seniority of Assistant Commandants<sup>1</sup> in the Sahastra Seema Bal<sup>2</sup>.

2. Recruitment Rules governing the seniority of ACs in the SSB were first promulgated in the form of the Special Service Bureau Assistant Commandant Group 'A' (General Duty) post Recruitment Rules, 2003<sup>3</sup>.

3. Relevant executive instructions

Before proceeding further, it would be appropriate to refer to the relevant executive instructions, around which the controversy in these writ petitions revolves.

3.1 Standing Order 06/2001 dated 23 February 2001 issued by the DG, CRPF

Prior to 2001, there were only two modes of recruitment for ACs in the SSB, which were direct recruitment and promotion. *Vide* Standing Order 06/2001<sup>4</sup> dated 23 February 2001 issued by the Directorate General, Central Reserve Police Force<sup>5</sup>, under the subject "Introduction of Limited Departmental Competitive Examination

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<sup>1</sup> "ACs" hereinafter

<sup>2</sup> "SSB" hereinafter

<sup>3</sup> "the 2003 RRs" hereinafter

<sup>4</sup> "SO 06/2001" hereinafter

<sup>5</sup> "CRPF" hereinafter



(LDCE) for Promotion to Assistant Commandant”, LDCE was introduced as a mode of recruitment to the post of Assistant Commandant in the CRPF. Clause 3(e)(viii) of SO 06/2001 read thus:

“viii) **SENIORITY**

Personnel recruited through LDCE will be treated as part of promotion quota and their seniority will be with reference to the date of selection as per DOPT OM No. 22011/5/76 Estt D dated 24.6.78. Within the candidates selected through LDCE, the inter se seniority will be as per their position in the merit list of LDCE.”

### 3.2 The 2003 RRs

The 2003 RRs of the SSB, therefore, envisaged three modes of recruitment for the post of AC, i.e. 50% by direct recruitment, 33% by promotion and 17% by LDCE. The preamble to the 2003 RRs, and Rule 8(1), 8(2) and 8(3)(i) to (iv) thereof, which alone are relevant for our purpose, read thus:

“In exercise of the powers conferred by Sub- section (i) read with clause (b) of Sub- section (2) of Section 18 of the Central Reserve Police Force Act, 1949 (66 of 1949) the Central Government hereby makes the following rules regulating the method of recruitment to the post of Assistant Commandant Group ‘A’ (General Duty) posts in the Special Service Bureau, namely: –

\*\*\*\*\*

#### 8. **Seniority:** –

- (1) All Officers holding a higher rank shall be senior to officers holding a lower rank.
- (2) In a particular rank seniority of officers appointed to any post shall be determined in accordance with the order of selection for appointment to that post.



(3) Subject to the provisions of sub- rule (2) inter se seniority amongst officers holding the same rank shall be as follows: –

(i) Seniority of officers promoted on the same day shall be determined in the order in which they are selected for promotion to the rank.

(ii) Inter se seniority of direct recruits shall be determined by adding together the marks obtained by them in recruitment test, the Foundation Course, and the Basic Professional Courses in the ratio of 50:10:40.

(iii) Seniority of temporary officers, subject to the provisions of clauses (i) and (ii) shall be determined on the basis of the order of merit at the time of their selection and officers selected in an earlier batch will be senior to officers selected in subsequent batches.

(iv) Seniority of officers, subject to the provisions of clauses (i), (ii) and (iii) shall be determined according to the date of their continuous appointment in that rank.

### 3.3 The 2010 RRs

The 2003 RRs were superseded, to the extent stated therein, by the Sahastra Seema Bal Assistant Commandant Group 'A' (General Duty) Combatised post Recruitment Rules, 2010<sup>6</sup>, which were promulgated on 25 August 2010 and came into force with effect from the said date. The 2010 RRs also envisaged recruitment to the post of AC by direct recruitment, promotion and LDCE in the ratio of 50%, 33% and 17% respectively. The opening preamble to the 2010 RRs, and Rule 5 thereof, which was identical to Rule 8 of the 2003 RRs, may be reproduced thus:

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6. "the 2010 RRs" hereinafter

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“In exercise of the powers conferred by sub- section (1) read with clauses (a) and (c) of sub- section 2 of Section 155 of the Sahastra Seema Bal Act, 2007 (53 of 2007) and in supersession of the Special Service Bureau Assistant Commandant Group ‘A’ (General Duty) post Recruitment Rules 2003 except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules to regulate the method of recruitment to the post of Assistant Commandant Combatised (General Duty) Group ‘A’ posts in the Sahastra Seema Bal under the Ministry of Home Affairs, namely :-

\*\*\*\*\*

**5. Seniority. –**

- (1) All Officers holding a higher rank shall be senior to officers holding a lower rank.
- (2) In a particular rank seniority of officers appointed to any post shall be determined in accordance with the order of selection for appointment to that post.
- (3) Subject to the provisions of sub- rule (2) inter se seniority amongst officers holding the same rank shall be as follows: –
  - (i) Seniority of officers promoted on the same day shall be determined in the order in which they are selected for promotion to the rank.
  - (ii) Inter se seniority of direct recruits shall be determined by adding together the marks obtained by them in recruitment test, the Foundation Course, and the Basic Professional Courses in the ratio of 50:10:40.
  - (iii) Seniority of temporary officers, subject to the provisions of clauses (i) and (ii) shall be determined on the basis of the order of merit at the time of their selection and officers selected in an earlier batch will be senior to officers selected in subsequent batches.
  - (iv) Seniority of officers, subject to the provisions of clauses (i), (ii) and (iii) shall be



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determined according to the date of their continuous appointment in that rank.”

**3.4** Thus, there was no difference between the 2003 RRs and the 2010 RRs, either insofar as the modes of recruitment to the post of AC was concerned, or in respect of the provisions governing seniority.

### **3.5** The 2012 RRs

**3.5.1** The 2010 RRs were superseded, to the extent stated therein, by the Sahastra Seema Bal Group ‘A’ Combatised (General Duty) Second-In-Command, Deputy Commandant and Assistant Commandant posts Recruitment Rules, 2012<sup>7</sup>. The modes of recruitment to the post of AC, in the 2012 RRs, remained the same as they were in the 2003 and 2010 RRs, i.e., 50% by direct recruitment, 33% by promotion and 17% by LDCE.

**3.5.2** Significantly, however, the 2012 RRs did not contain any separate Rule governing seniority, such as Rule 8 of the 2003 RRs and Rule 5 of the 2010 RRs. The opening preamble to the 2012 RRs read thus:

“In exercise of the powers conferred by sub- section (1) read with clauses (a) and (c) of sub- section 2 of Section 155 of the Sahastra Seema Bal Act, 2007 (53 of 2007), the Central Government hereby makes the following rules. in supersession of Sahastra Seema Bal Group ‘A’ Combatised (General Duty) Officers Recruitment Rules 2004 in so far as it relates to the posts of Second-In-Command and Deputy Commandant and Sahastra Seema Bal Assistant Commandant Group ‘A’ (General Duty) Combatised post Recruitment Rules, 2010, in so far as it relates to the post of Assistant Commandant to regulate the method of recruitment to the

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Group 'A' Combatised (General Duty) posts in the Sahastra Seema Bal under the Ministry of Home Affairs, namely :-”

**3.5.3** Thus, while there was no difference between the 2003 RRs and the 2010 RRs, insofar as the modes of recruitment to the post of AC, or the manner in which seniority in the post of AC was to be governed and regulated, was concerned, the 2012 RRs made a departure, as they did not contain any Rule similar to Rule 8 of the 2003 RRs or Rule 5 of the 2010 RRs, providing for the manner in which seniority was to be determined.

### **3.6 Draft Seniority List dated 5 June 2018**

**3.6.1** The first attempt at determining seniority in the grade of AC in the SSB, after the promulgation of the RRs in 2003, was by Office Memorandum<sup>8</sup> dated 5 June 2018 issued by the Directorate General, SSB. We deem it necessary to reproduce the OM, in its entirety, thus:

“No.17/01/2017/SSB/Pers.I(B)/6125-6250

Dated the: 05<sup>th</sup> June, 2018.

#### **OFFICE MEMORANDUM**

**Sub: Draft revised Seniority list of Assistant Commandants (GD) from 2003 onwards.**

Draft revised Inter-se-seniority of Assistant Commandant (GD) appointed through (i) Promotion, (ii) Limited Departmental Competitive Examination (LDCE) and (iii) Direct Recruitment in SSB from 2003 onwards, fixed by a board constituted at Force Hqrs, SSB, New Delhi.

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2. The seniority has been fixed as per prevailing instructions/Rules. The details of these instructions/Rules are as under:-

**From the year 2003 to 2012-13:-**

- a. Seniority list from the year 2003 to 2012-13, has been prepared in accordance with the SSB, Assistant Commandant, Group-"A" (General Duty) Post, Recruitment Rules, 2003 & 2010.
- b. *All officers have been placed in the seniority list from the date of their continuous appointment in the rank i.e. 2003 to 2012-13.*
- c. Inter-se-seniority of direct recruits has been determined in the ratio of 50:40 in accordance with Notified RRs.
- d. Inter-se-seniority of LDCE officers has been determined in the order of merit (marks obtained in LDCE).
- e. The seniority of the Direct recruits who seek extension in joining time for 04 (four) weeks has been determined alongwith the batch-mates after determining their inter-se-seniority as per MHA letter No.I-45022/69/97-Pers.1, dated 20/08/1997.
- f. The seniority of the Direct recruits who seek extension in joining time in excess of four weeks has been depressed and they have been placed in the seniority list below the relegated candidates as per MHA letter, dated 20/08/1997.
- g. The candidates who were relegated to the next batch have been placed in the seniority at the bottom of their own batch.

**From the year 2013-14 to 2015-16:-**

- a. *Seniority from the year 2013 onwards, has been determined in accordance to the DoP&T OM, dated 04.03.2014 issued in pursuance to Hon'ble Supreme Court, judgment dated 27/11/2012, in CA No. 7514-7515/2005, in the case of **Union of India and others v N.R. Parmar and others**<sup>9</sup>,*



- b. The promotee officers have been placed in the seniority list as per their empanelment in the DPC.
- c. The inter-se-seniority of direct recruits have been determined in the ratio of 50:40, in accordance with Notified RRs and MHA note CF-102999/12, dated 11/05/12.
- d. Inter-se-seniority of LDCE officers has been determined in the order of merit (after adding together the marks obtained in LDCE and Basic Professional Course) from the year 2013-14 onwards, in pursuant to MHA letter No.I-45020/62010-Pers.II, dated 09/07/2012.
- e. The seniority of the Direct recruits who seek extension in joining time for (04 (four) weeks has been determined alongwith the batch-mates after determining their inter-se-seniority as per MHA letter No.I-45022/69/97-Pers.I dated 20/08/1997, and note CF-3237943/13, dated 13/02/2014.
- f. The seniority of the Direct recruits who seek extension in joining time in excess of four weeks has been depressed and they have been placed in the seniority list below the relegated candidates as per MHA letter No.I-45022/69/97-Pers.I, dated 20/08/1997 and note CF-3237943/13, dated 13/02/2014.
- g. The candidates who were relegated to the next batch have been placed in the seniority at the bottom of their own batch.
- h. After taking into account the above factors, seniority in between promotee/LDCE & direct recruits was determined in the ratio of P1, P2, L1, DI, D2, D3 and so on in pursuant to DOP&T UO Note No.108301/Estt.D, dated 23/01/2012.
3. The seniority list of Assistant Commandants may please be circulated amongst the officers concerned and representation, if any, may please be sent to this Directorate within 30 days from the date of issue of this memorandum. No representation received after the stipulated period, shall be entertained. The seniority list will be treated as final, if no representation/objection is received within the stipulated time period.
4. This issues with approval of the DG, SSB.



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Encl: **Draft Revised Seniority list from 2003 onwards.**

(Anurag Kumar), IPS  
Dy Inspector General (Pers)”

**3.6.2** Thus, up to 2012, the draft Seniority List dated 5 June 2018 placed all ACs, irrespective of their mode of recruitment, in the Seniority List based on their dates of continuous officiation in the rank, determined on the basis when they joined the post of AC.

**3.7 Final Seniority Lists dated 21 September 2020 and 23 September 2020**

After considering the representations received against the draft Seniority List circulated on 5 June 2018, the SSB circulated the final Seniority Lists, in respect of ACs appointed prior to 2012 and ACs appointed after 2012 under cover of OMs dated 21 September 2020 and 23 September 2020, which read thus:

**OM dated 21 September 2020**

“No.19/16/2019/SSB/Pers.I(Pt.)/11442-11595

Dated the: 21<sup>st</sup> September, 2020.

**Office Memorandum**

**Sub: Seniority list of Assistant Commandants (GD) in SSB.**

Please refer to Force Hqrs SSB Office Memorandum No.17/01/2017/SSB/Pers.I (B)/6125-6250 dated 5<sup>th</sup> June, 2018 circulating there under draft revised seniority list of Assistant Commandants (GD) appointed through Promotion, Limited Departmental Competitive Examination (LDCE) and Direct Recruitment in SSB from 2003 onwards with the direction to submit representation, if any, within 30 days from the date of issue of the office memorandum.

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2. Several representations in respect of the Officers appointed as Assistant Commandant (GD) after 2003 in SSB were received against Force Head Quarter SSB Office Memorandum No. 17/01/2017/SSB/Pers.I(B)/6125-6250 dated 5<sup>th</sup> June, 2018. Therefore, a Board of Officers was detailed to examine these representations in detail at Force Hqrs SSB.

3. Accordingly, seniority has been re-drawn as per instructions/Rules in vogue on the recommendations of the Board so detailed. The instructions/Rules/parameters relied upon for fixation of the seniority, are as under:-

i) The Special Service Bureau, Assistant Commandant Group 'A' (General Duty) post Recruitment Rules, 2003 (RRs 2003) notified vide G.S.R. 242 dated 10/06/2003.

ii) SSB Recruitment Rules, 2010 notified vide G.S.R. 703 (E) dated 25.08.2010, with the same provisions of seniority as defined in the Recruitment Rules, 2003.

iii) As per sub rule (2) of RR's 2003 & 2010 seniority of officers appointed to any post shall be determined in accordance with the order of selection for appointment to that post". The process for "order of selection" for fixation of seniority has been defined vide Department of Personnel & Adm Reforms **OM No.28011/6/76-Estt.(D) dated 24<sup>th</sup> June 1978** which is reproduced as under:-

| <b><u>Direct Recruitment</u></b>                                    | <b><u>Date of completion of selection process</u></b>         |
|---------------------------------------------------------------------|---------------------------------------------------------------|
| (a) Through examination conducted by UPSC or any other authorities. | Date of publication/announcement of results.                  |
| (a) Through interviews conducted by UPSC or any other authorities.  | Date of Commission's letter containing their recommendations. |

### **Promotion**

|                                                                            |                                                                                  |
|----------------------------------------------------------------------------|----------------------------------------------------------------------------------|
| (a) When UPSC is associated.                                               | Date of UPSC's letter containing their recommendations ratifying the promotions. |
| (b) When UPSC is not associated or its formal concurrence is not required. | Last date of DPC meeting.                                                        |
| (c) Limited Departmental                                                   | Date of announcement of                                                          |



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|              |          |
|--------------|----------|
| Examination. | results. |
|--------------|----------|

iv) Accordingly, the inter se seniority of **DAGOs (Direct recruitment), Promotees and DEGOs (Through LDCE)** has been finalized as per order of their selection as cited above.

v) The merit of **DAGOs** has been drawn by taking into account the aggregate of marks in the ratio of **50:10:40, i.e. 5/10 of recruitment test marks and 4/10 of basic training marks, with no marks for Foundation Course as no foundation course has been conducted in SSB.**

vi) A number of officers of some batches have undergone basic training in different Academies till 2007 where total marks during final test of Basic training were different. Similarly, a number of officers of a batch have undergone basic training in same Academy but during different years, where the total marks of Basic training were different. Therefore, above formula as per SSB RRs and Training Relegation Policy has been used to address the issue to bring about parity among such officers.

vii) The merit of **DEGOs** has been drawn by adding together the marks obtained in Recruitment test and the Basic Professional Courses (each out of 100) as per Training Relegation Policy.

viii) The seniority of the **promotees** has been reckoned as per order of their empanelment in the DPC/last date of DPC meeting.

ix) The seniority in cases of delay in reporting for duty after selection has been reckoned in the light of instructions contained vide DoP&T OM No.9/23/71-Estt. (D) dated 06.06.1978 & OM No.35015/2/93-Estt. (D) dated 09.08.1995.

x) The seniority of the officers relegated and officers resigned during training and later rejoined has been fixed as per "Test/Relegation Policy for Assistant Commandant (DE)/DAGO Course in SSB issued vide FHQ memorandum No.9/SSB/Trg-2/2006(5)/II/4737-39 dated 01.06.2007.

4. Accordingly, all the representations received from the officers appointed in SSB as Assistant Commandant (GD) from 2003 to 2012 made against draft seniority list circulated vide FHQ OM dated 05.06.2018 and their after are hereby disposed of.

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5. Final seniority lists of Assistant Commandants (GD) for the year 2003-2004 to 2012-13 are circulated for information of all concerned.

6. This issues with approval of the DG, SSB.

Encl: **Final Seniority list of ACs(GD) from 2003-04 to 2012-13**

(B.S. Jaswal)  
Dy Inspector General (Pers)''

OM dated 23 September 2020

“No.19/16/2019/SSB/Pers.1 (Pt.)/11777-891

Dated 23 September 2020

**Office Memorandum**

**Sub: Seniority list of Assistant Commandants (GD) in SSB.**

Please refer to Force Hqrs SSB Office Memorandum No.17/0J/2017/SSB/Pers.1(B)/6125-6250 dated 5<sup>th</sup> June 2018 circulating there under draft Revised seniority list of Assistant Commandants (GD) appointed through Promotion, Limited Departmental Competitive Examination (LDCE) and Direct Recruitment in SSB from 2003 onwards with the direction to submit representation, if any. Within 30 days from the date of issue of the office memorandum.

2. Several representations in respect of the officers appointed as Assistant Commandant (GD) after 2013 in SSB were received against Force Head Quarter SSB Office Memorandum No. 17/01/2017/SSB/Pers.1(B)/6125-6250 dated 5<sup>th</sup> June 2018. Therefore, a Board of Officers was detailed to examine these representations in detail at Force Hqrs SSB.

3. Accordingly, seniority has been re-drawn in the light of instructions/Rules in vogue on the recommendations of the Board of Officers so detailed. The instructions/Rules/parameters relied upon for fixation of the seniority are as under:-

- (i) The Special Service Bureau. Assistant Commandant Group A (General Duty) post Recruitment Rules, 2003 (RRs 2003) notified vide G.S.R. 242 dated 10/06/2003.



(ii) SSB Recruitment Rules, 2010 notified vide G.S.R. 703 (E) dated 25.08.2010, with the same provisions of seniority as defined in the Recruitment Rules, 2003.

(iii) The SSB RRs 2012 notified vide G.S.R. 530 (E) dated 03-07-2012 in supersession of the SSB RRs 2004 (only pertaining to the ranks of 21C and DC) and SSB RRS 2010 (pertaining to AC).

(iv) The seniority of Assistant Commandants appointed in 2003 onwards has been fixed as per extant MHA/DoP&T instructions prevailing at that time, which details are as under:

Department of Personnel & Adm Reforms OM No.28011/6/76-Estt.(1)) dated 24 June 1978 prescribing the relative seniority of direct recruits/promotees/LDCE (order of selection) in the following manner:

| <u>Direct Recruitment</u>                                           | <u>Date of completion of selection process</u>                |
|---------------------------------------------------------------------|---------------------------------------------------------------|
| (a) Through examination conducted by UPSC or any other authorities. | Date of publication/announcement of results.                  |
| (b) Through interviews conducted by UPSC or any other authorities.  | Date of Commission's letter containing their recommendations. |

### Promotion

|                                                                            |                                                                                 |
|----------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| (a) When UPSC is associated                                                | Date of UPSC's letter containing their recommendations ratifying the promotion. |
| (b) When UPSC is not associated or its formal concurrence is not required. | Last date of DPC meeting                                                        |
| (c) Limited Departmental Examination                                       | Date of announcement of results.                                                |

MHA order dated 30 September 2002 prescribing the inter se seniority of direct recruits by drawing merit by adding marks obtained in recruitment test und Basic professional course in the ration of 50:10:40.



(v) Accordingly, the inter se seniority of DAGOs (Direct recruitment), Promotees and DEGOs (Through LDCE) has been finalized as per order of their selection as cited above.

(vi) The merit of DAGOs has been drawn by taking into account the aggregate of marks in the ratio of 50:10:40, i.e. 5/10 of recruitment test marks and 4/10 of basic training marks, with no marks for Foundation Course as no foundation course has been conducted in SSB.

(vii) The merit of DEGOs has been drawn by adding together the marks obtained in Recruitment test and the Basic Professional Courses (each out of 100) as per Training Relegation Policy.

(viii) The seniority of the promotees has been reckoned as per order of their empanelment in the DPC/Last date of DPC meeting.

(ix) The seniority in cases of delay in reporting for duty after selection has been reckoned in the light of instructions contained vide DoP&T OM No.9/23/71-Estt. (D) dated 06.06.1978 & OM No.35015/2/93-Estt. (D) dated 09.08.1995.

(x) The seniority of the officers relegated and officers resigned during training and later rejoined has been fixed as per "Test/Relegation Policy for Assistant Commandant (DE DAGO Course in SSB issued vide FHQ memorandum No.9/SSB/Trg-2/2006(5)/II/4737-39 dated 01.06.2007

(xi) In order to maintain uniformity and consistency in the matter of fixation of seniority of ACs, same yardstick has been followed in respect of seniority of ACs appointed between 2003 to 2012 also.

4. Accordingly, all the representations received from the officers appointed in SSB as Assistant Commandant (GD) from 2013-14 to 2015-16 made against draft seniority list circulated vide FHQ OM dated 05.06.2018 and their after are hereby disposed of.

5. Final seniority lists of Assistant Commandants (GD) for the year 2013-14 to 2015-16 are circulated for information of all concerned

6. This issues with approval of the DG, SSB



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**Encl: Final Seniority list of ACs(GD) from 2013-14 to 2015-16.**

Sd/-  
(B.S. Jaswal)  
Dy Inspector General (Pers)”

### **3.8 DOPT<sup>10</sup> OM dated 24 June 1978**

The OM dated 24 June 1978<sup>11</sup>, to which the Seniority Lists dated 21 September 2020 and 23 September 2020 make reference, read as under:

“North Block, New Delhi, the 24th June, 1978

#### **OFFICE MEMORANDUM**

**Subject: Starting point in the recruitment roster for the purpose of seniority procedure regarding.**

The undersigned is directed to say that from the reference received in the Department and the representations made by the affected individuals, it has been noticed that there is no uniform practice in regard to the starting point in the recruitment roster when recruitment is made by more than one method, namely, direct recruitment/promotion/transfer on deputation etc.

The following are the among the diverse methods being adopted by various departments in regard to the starting point of the roster:

- (a) the mode of recruitment for which action has been initiated first;
- (b) the mode of recruitment through which first appointment was made after the notification of the recruitment rules;
- (c) the mode of recruitment mentioned first in the recruitment rules for the post concerned.
- (d) the mode of recruitment which is the most predominant.

<sup>10</sup> Department of Personnel and Training

<sup>11</sup> “the 1978 DOPM OM” hereinafter



In some other cases, the roster has been maintained according to the illustration given in "General principle (6)" in the annexure to M.H.A.O.M.No.9/11/55-RPS dated 22.12.1959.

2. This question has been examined in detail by this Department in consultation with the UPSC and it has now been decided that the starting point in the roster should be that mode of recruitment prescribed in the Recruitment Rules for which the selection process had been completed first. For this purpose, the date of completion of the selection process will be determined as follows:

DoP&T's O.M. No.20011/1/2008-Estt.(D) Dated 11<sup>th</sup> November 2010

| <b><u>Direct Recruitment</u></b>                                    | <b><u>Date of completion of selection process</u></b>         |
|---------------------------------------------------------------------|---------------------------------------------------------------|
| (a) Through examination conducted by UPSC or any other authorities. | Date of publication/announcement of result.                   |
| (a) Through interviews conducted by UPSC or any other authorities.  | Date of Commission's letter containing their recommendations. |

### **Promotion**

|                                                                             |                                                                                 |
|-----------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| (a) Where UPSC is associated.                                               | Date of UPSC's letter containing their recommendations ratifying the promotion. |
| (b) Where UPSC is not associated or its formal concurrence is not required. | Last date of DPC meeting.                                                       |
| (c) Limited Departmental Examination.                                       | Date of Announcement of results.                                                |

3. A new roster will have to be started in the following cases:

- (i) From the date the recruitment rules are notified in the gazette.
- (ii) When there is an amendment to the Recruitment Rules which changes the percentage allotted for the various modes of recruitment.

4. These instructions shall come into force with effect from the date of issue of this Office Memorandum and recruitment rosters already maintained/started need not be reviewed on the



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basis of the above instructions. However, where the persons concerned have been approved for appointment but the Recruitment roster has not been started this may be started in the light of the instructions.

Sd/-  
(N. Rangarajan)  
Deputy Secretary”

#### 4. Grievances in the individual writ petitions

##### 4.1 WP (C) 1571/2018 [Sanjay Kumar v Union of India & ors]

4.1.1 The petitioner was directly recruited to the SSB on 26 November 2007 as AC. His case, as articulated by Mr. Vinay Garg, is that, by the time the first draft seniority list in the grade of AC was issued on 5 June 2018, the 2012 RRs had been promulgated on 3 July 2012 and that the said RRs superseded, in their entirety, the 2010 RRs which, in turn, superseded, in their entirety, the 2003 RRs. Inasmuch as the 2012 RRs did not contain any provision for seniority, unlike the 2010 RRs and the 2003 RRs, Mr. Garg’s contention is that seniority in the grade of AC had to be determined on the basis of the extant executive instructions in the form of Office Memoranda dated 7 February 1986, 3 July 1986, 4 March 2014 and 13 August 2021 issued by the DOPT read with the judgment of the Supreme Court in **Parmar**. As his representation, to the said effect, stands rejected by the SSB vide Office Order dated 16 June 2017, the petitioner prayed that the said Office Order be quashed and set aside and that the SSB be directed to issue a fresh seniority list fixing the seniority of ACs in terms of the judgment in **Parmar** read with DOPT OM’s dated 7 February 1986, 3 July 1986, 4 March 2014 and 13 August 2021.



**4.1.2** Mr. Garg submits, therefore, that the draft Seniority List dated 5 June 2018 and the final Seniority List dated 21 September 2020 are both remiss in the manner in which they fix the seniority of ACs. The final Seniority List fixes the seniority of ACs on the basis of Rule 8(2) of the 2010 RRs, which corresponds to Rule 5(2) of the 2003 RRs. Inasmuch as, in his submission, neither of these RRs remained applicable after the promulgation of the 2012 RRs, Mr. Garg contends that the *inter se* seniority of ACs is to be entirely redrawn in terms of *Parmar* read with the aforementioned DOPT OM.

**4.1.3** Mr. Garg further submits that he is not pressing prayer (ii) in the writ petition, which seeks setting aside of the 2003 RRs.

**4.2 WP (C) 8796/2020 [Brijesh Kumar Rai & ors v Union of India & ors]**

**4.2.1** This writ petition has been filed by 23 petitioners. Of these, Petitioners 3 to 7 and 11 to 23 were appointed as AC prior to 2012, whereas Petitioners 1, 2 and 8 to 10 were appointed after 2012. Petitioners 3, 6, 11, 13 to 20 and 23 are promotees, whereas Petitioners 1, 2, 4, 5, 7 to 10, 12, 21 and 22 were appointed via LDCE and would be referred to, hereinafter, as “LDCE appointees”. The petitioners assail final Seniority Lists dated 21 September 2020, concerning ACs appointed prior to 2012 and 23 September 2020, of ACs appointed after 2012. The petitioners’ contention, as urged by Ms. Malavika Trivedi, learned Senior Counsel, is that the *inter se* seniority amongst direct recruit ACs and LDCE/promotee ACs, which



had correctly been reflected in the draft seniority list dated 5 June 2018, was wrongly redrawn in the final Seniority Lists dated 21 September 2020 and 23 September 2020 on the basis of Rule 8(2) of the 2003 RRs and Rule 5(2) of the 2010 RRs. While she does not dispute the applicability of the 2003 RRs or the 2010 RRs, Ms. Trivedi's contention is that the Rule which applies is not Rule 8(2) or Rule 5(2) but Rule 8(3)(iv) of the 2003 RRs, which corresponds to Rule 5(3)(iv) of the 2010 RRs. She also questions the applicability of the 1978 DOPT OM, which has been invoked by the SSB to redraw the seniority, in conjunction with Rule 8(2) or Rule 5(2) of the 2003 and 2010 RRs. According to Ms. Trivedi, the 1978 OM has no application at all.

**4.2.2** Ms. Trivedi's prayer is, therefore, that the OM's dated 21 September 2020 and 23 September 2020, whereunder the final Seniority Lists were issued and circulated, be quashed and set aside and that the SSB be directed to finalise the *inter se* seniority of ACs in terms of the draft Seniority List dated 5 June 2018 which, according to her, correctly reflects the seniority position.

#### **4.3 WP (C) 5247/2021 [Upendra Kumar v Union of India]**

**4.3.1** The petitioner in this writ petition was appointed AC on 9 May 2008, by promotion. He, too, challenges the final Seniority List dated 21 September 2020 on grounds identical to those urged by the petitioners in WP (C) 8796/2020 and seeks that the respondents be



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directed to finalise the Seniority List of ACs in terms of the draft Seniority List dated 5 June 2018.

**4.3.2** Prayer (d) in the writ petition seeks quashing and setting aside of the DOPT OM dated 24 June 1978 *supra*. However, this prayer was not pressed during arguments.

**4.4 WP (C) 7064/2021 [*Achyut Singh & ors v Union of India & ors*]**

There are four petitioners in this writ petition. All are direct recruit ACs. Of these, Petitioner 1 Achyut Singh joined on 7 October 2006, Petitioner 2 Parkash Chand Baswal joined on 7 December 2009, Petitioner 3 Chandrashekhar C. Patil joined on 8 September 2012 and Petitioner 4 Aman Deep Mahas joined on 4 April 2016. Their stand is the same as that of Sanjay Kumar, the petitioner in WP (C) 1571/2018, i.e., that the draft Seniority List dated 5 June 2018 and the final Seniority Lists dated 30 September 2020 are both incorrect and have to be set aside, as seniority was required to be drawn in terms of the DOPT OMs dated 3 July 1986 and 4 March 2014. They, therefore, pray that the draft Seniority List and the final Seniority List be both quashed and set aside.

**5. Issue in controversy**

**5.1** The controversy, therefore, percolates down to the manner in which *inter se* seniority among direct recruit ACs on the one hand, and promotee or LDCE ACs on the other, is to be determined.



**5.2** Among the parties in these petitions, three different methods of determining the *inter se* seniority have been canvassed.

**5.3** The promotees and LDCE appointees, who are petitioners in WP (C) 8796/2020 and WP (C) 5247/2021, submit that the provision which applies is Rule 8(3)(iv) of the 2003 RRs, or Rule 5(3)(iv) of the 2010 RRs.

**5.4** The direct recruits have adopted two contrasting positions.

**5.5** Mr. Sai Deepak and Mr. Ankur Chhibber, appearing for some of the direct recruits, who are respondents in WP (C) 8796/2020, have contended that the *inter se* seniority has to be determined on the basis of Rule 8(2) of the 2003 RRs or Rule 5(2) of the 2010 RRs, read with the 1978 DOPT OM, as has been done by the SSB while issuing the Seniority Lists dated 21 September 2020 and 23 September 2020. In other words, the contention of the direct recruits who are represented by Mr. Sai Deepak and Mr. Ankur Chhibber is that the Seniority Lists dated 21 September 2020 and 23 September 2020 correctly reflect the *inter se* seniority among direct recruits and promotees/LDCE appointees, and calls for no interference.

**5.6** Mr. Vinay Garg and Mr. Ganesh Khemka, who appear for the direct recruits who are petitioners in WP (C) 7064/2021 and WP (C) 1571/2018, on the other hand, submits that, with the notification of the 2012 RRs, the earlier 2003 RRs and 2010 RRs stood completely



eviscerated, and that, after 2012, as the draft Seniority List of ACs was first issued on 5 June 2018, it had to abide by the 2012 RRs. Inasmuch as the 2012 RRs did not contain any provision for determining seniority, *inter se* seniority among direct recruit ACs and promotee/LDCE ACs had to be determined on the basis of DOPT OMs dated 7 February 1986, 3 July 1986, 4 March 2014, 16 June 2017 and 13 August 2021, read with the judgment of the Supreme Court in ***Parmar***.

**5.7** We are called upon to determine which of these varied modes of determination of *inter se* seniority among direct recruit ACs on the one hand and LDCE/promotee ACs on the other, would prevail.

**5.8** An ancillary issue which arises for consideration is whether the position would be different with respect to ACs appointed prior to 2012, and thereafter.

### **Rival Submissions**

#### **Submissions of Mr. Ganesh Khemka on behalf of petitioners in WP (C) 7064/2021**

**6.** Appearing for the petitioners in WP (C) 7064/2021, who are direct recruits, Mr. Khemka submits that the impugned Seniority Lists dated 21 September 2020 and 23 September 2020 are both liable to be set aside, as they determine the *inter se* seniority in the grade of AC on the basis of the 2003 RRs and the 2010 RRs, both of which stood superseded, in their entirety, by the 2012 RRs. Mr. Khemka's



submission is that, as the draft Seniority List was issued on 5 June 2018, it could not have applied either the 2003 RRs or the 2010 RRs. The only RRs which applied, on that date, were the 2012 RRs.

7. Mr. Khemka submits that, though the preamble to the 2012 RRs expressly stipulated that they superseded the 2010 RRs, insofar as they related to the post of AC to regulate the method of recruitment to Group A combatised post in the SSB, the expression “method of recruitment” could not be accorded a literal meaning so as to exclude seniority. In other words, it is Mr. Khemka’s submission that Rule 5 of the 2010 RRs, which dealt with fixation of seniority, also stood superseded by the 2012 RRs, even though the preamble to the 2012 RRs restricted the supersession to the 2010 RRs insofar as they dealt with the “method of recruitment”. To support this submission, Mr. Khemka has drawn our attention to the preamble to the 2010 RRs as well as the preamble to the 2003 RRs, both of which state that the RRs set out the method of recruitment to the posts covered thereby. Despite purportedly having been promulgated to deal with the method of recruitment, he submits that the 2003 RRs, as well as the 2010 RRs, included specific provisions dealing with seniority – Rule 8 in the 2003 RRs and Rule 5 in the 2010 RRs. These RRs, therefore, he submits include within the broad ambit of the expression “method of recruitment”, fixation of seniority as well. Extrapolating this interpretation to the Preamble to the 2012 RRs, Mr. Khemka submits that the expression “method of recruitment”, as employed in the preamble to the 2012 RRs must also be read as including the Rule relating to seniority, i.e. Rule 5 of the 2010 RRs.



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8. Inasmuch as the 2012 RRs contained no provision governing seniority, and Mr Khemka submits that, after 2012, no Rules, governing seniority in the grade of AC, could be said to exist, it is necessary to seek recourse to applicable executive instructions, in the form of OMs issued by the DOPT, for fixing seniority in the grade of AC.

9. Mr. Khemka places reliance on paras 11 and 34 of the judgment of the Supreme Court in *Kolhapur Canesugar Works Ltd. v Union of India*<sup>12</sup>, to contend that, where the later Rule is silent, there would be a presumption of complete repeal of the earlier Rules, once the later Rules stand promulgated. Section 6 of the General Clauses Act, 1897, he submits, does not apply to Rules. Besides, the 2012 Rules do not contain any saving clause.

10. Mr. Khemka submits, therefore, that the impugned Seniority Lists dated 21 September 2020, 23 September 2020, as well as the draft final Seniority List dated 5 June 2018, deserve to be quashed and set aside, and the respondents directed to re-fix the seniority amongst direct recruits, LDCE and promotees ACs on the basis of applicable executive instructions issued by the DOPT.

**Submissions of Mr. Vinay Kumar Garg on behalf of the petitioner in WP (C) 1571/2018**



11. At the outset, Mr. Vinay Kumar Garg submits that he is not pressing prayer (ii) in WP (C) 1571/2018, which seeks setting aside of the 2003 RRs. He, however, presses prayers (i) and (iii).

12. Mr. Garg reiterates Mr. Khemka's submission that, as the preamble to the 2003, 2010 and 2012 RRs all employ the expression "method of recruitment", and the 2003 and 2010 RRs include a specific clause, in each case, on the basis of which seniority in the grade of AC is to be determined, determination of seniority should also be read as being included within the ambit of the expression "method of recruitment". As such, he echoes Mr. Khemka's submission that, after the promulgation of the 2012 RRs, neither the 2003 RRs nor the 2010 RRs survived, both having been superseded in their entirety.

13. As the 2012 RRs did not contain any provision for determination of seniority, Mr. Garg submits that seniority was required to be determined on the basis of the extant executive instructions. He points out that, predicated on this premise, the petitioner in WP (C) 1571/2018 had initially petitioned the High Court of Patna by way of CWJC 4305/2015<sup>13</sup>. The Patna High Court disposed of the writ petition in the following terms:

"Writ application is disposed of after quashing Annexures 5 and 6, which are dated 21<sup>st</sup> May, 2013 and 21<sup>st</sup> August, 2013, with an observation that keeping in mind the development which emerges from the decision rendered by the Hon'ble Apex Court in the case of *Union of India & ors. v N.R. Parmar & ors.*, reported in (2012) 13 SCC 340, as well as subsequent circular issued by the Union of



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India dated 4th March, 2014, petitioner will be free to file a fresh application, keeping in mind above two issues, for fresh consideration by the respondents.

*In view of above, Court does not express any opinion on the merit of the case.*

A decision in this regard should be taken preferably within a period of four months from the date of filing of such an application with a copy of this order.”

(Emphasis supplied)

14. The decision in ***Parmar***, to which the afore-extracted order of the High Court of Patna makes reference, points out Mr. Garg, requires *inter se* seniority among direct recruits and promotees/LDCE appointees to be fixed on the basis of the quota-rota principle. This principle also stands enunciated in DOPT OM's dated 7 February 1986, 3 July 1986, 4 March 2014 and 13 August 2021. The relevant clauses / paragraphs from the said OM's may be reproduced thus:

OM dated 7 February 1986

“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 22 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 promotes is determined on 1:1 basis.

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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.

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.

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6. The General Principles of seniority issued on 22<sup>nd</sup> December, 1959 referred to above, may be deemed to have been modified to that extent.

7. These orders shall take effect from 1<sup>st</sup> 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.

OM dated 3 July 1986

“SENIORITY OF DIRECT RECRUITS AND PROMOTERS

(MHA O.M.N0.9/II/55-RPS dated 22.12.59).

2.1 The relative seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment on the recommendations of the U.P.S.C or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection.

2.2 Where promotions are made on the basis of selection by a D.P.C., the seniority of such promotees shall be in the order in which they are recommended for such promotion by the Committee. Where promotions are made on the basis of seniority, subject to the rejection of the unfit, the seniority of persons considered fit for promotion at the same time shall be the same as the relative seniority in the lower grade from which they are promoted. Where, however, a person is considered as unfit for promotion and is superseded by a junior such persons shall not, if he is subsequently found suitable and promoted, take seniority in the higher grade over the junior persons who had superseded him.

2.3 Where persons recruited or promoted initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment, seniority shall follow the order of confirmation and not the original order of merit.

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.”

OM dated 4 March 2014

“The undersigned is directed to refer to the subject mentioned above and to say that the fundamental principles of inter



se seniority of direct recruits and promotees in Central Civil Services/posts were laid down in the Department of Personnel & Training (DOPT) O.M. No. 9/11/55-RPS dated 29.12.1959 which provided, inter alia, that the relative seniority of direct recruits and of promotes 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 Recruitment Rules.

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3. All the existing instructions on seniority were consolidated by DoPT through a single O.M. No. 22011/7/86-Estt(D) dated 03.07.1986.

4. In view of divergent stance taken by different Ministries/Departments on interpretation of 'available direct recruits and promotees' in the context of OM dated 7.2.86, the DoPT had issued O.M. No. 20011/1/2006-Estt.(D) dated 3.3.2008 which provided that the actual year of appointment both in the case of direct recruits and promotees, would be reckoned as the year of availability for the purpose of rotation and fixation of inter se seniority.

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. Union of India & 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 O.M. 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. Union of India & Ors.”

OM dated 13 August 2021

“7. Based on the above, it has been decided to modify the instructions relating to determination of inter se seniority between promotees and direct recruits as under:

- (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 well 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. 20.0.1 III12o.I2-Estt. (D) dated 4.3.2014, shall not be disturbed i.e. old cases are not to be reopened.
- (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 Vacancy/panel 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 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 promotes are assigned appointment/joining in that year their slots on 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.”

15. Mr. Garg, therefore, also submits that the final seniority lists issued on 21 September 2020 and 23 September 2020, which have not determined the *inter se* seniority amongst direct recruits, LDCE appointees and promotees ACs on the basis of the 2012 RRs read with the afore noted DOPT OMs, deserve to be set aside and the SSB directed to rework the seniority of ACs on the above basis.



**Submissions of Mr. Ankur Chhibber, appearing for Respondents 31, 125, 127, 162 and 163 in WP(C) 8796/2020**

16. Mr. Chhibber submits that prior to 2001, posts of AC in the SSB were filled up only by direct recruitment or by promotion with a 50:50 quota. The avenue of LDCE as a mode of recruitment to the post of AC was introduced by Government of India's Standing Order 06/2001 (*supra*). Clause 3(e)(viii) of SO 06/2001, reproduced in para 3.1 *supra*, required the seniority of LDCEs to be fixed on the basis of their date of selection as per DOPT OM dated 24 June 1978. This submission, he points out, was specifically engrafted into the appointment orders of the LDCE appointees.

17. It was for the first time in the 2003 RRs, points out Mr. Chhibber that vide Rule 8, a specific provision for fixation of *inter se* seniority was introduced. Rule 8(2) referred to the "order of selection". The very concept of "order of selection", he submits, takes one to the date of the DPC, in a case of selection by promotion and the date of appointment in the case of selection by LDCE or by direct recruitment. Drawing attention to the expression "completion of process of selection" in the 1978 OM, Mr. Chhibber submits that the SSB cannot be faulted in having fixed the *inter se* seniority among the promotees and LDCE appointees on one hand and direct recruits on the other on the basis of Rule 8(2) of the 2003 RRs/5(2) of the 2010 RRs read with the DOPT OM of 24 June 1978.

18. As such, Mr. Chhibber submits that there is no substance in the grievance either of the promotees/LDCE appointees who are the



petitioner in WP (C) 8796/2020 or of the promotee petitioner in WP (C) 5247/2021.

**Submissions of Mr. J. Sai Deepak, learned Senior Counsel, on behalf of Respondents 63, 103, 105, 107, 108, 121, 197 and 340 in WP(C) 8796/2020**

19. Mr. Sai Deepak has argued his case on merits and has also tendered written submissions. In as much as the submissions advanced by him orally stand comprehensibly captured in the written submissions, it is only necessary to reproduce paras 2 to 6 of the written submissions thus:

“2. The questions for consideration are summarized as under:

- i. Under the Recruitment Rules of 2003, what is the relationship between sub-rules (2) and (3) of Rule 8?
- ii. Specifically, what is the relationship between sub-rules (2) and (3)(iv) of Rule 8?

If Rule 8 is self-sufficient and so are the Rules, where do the Rules define "the order of selection" as contained in Rule 8(2)?

- iv. If there is no guidance in the Rules on "the order of selection", can reference be made to the 1978 DOPT OM? If yes, why?

- v. In the instant Petition, what is the consequence of the non-challenge to the applicability of the 1978 DOPT OM by the Petitioners?

**Interpretation of Rule 8**

3. The following position emerges from a clear and literal reading of Rule 8:

- i. The purpose of Rule 8 is to lay down the process for determination of Seniority of Officers. The three terms that warrant closer examination in the Rule are "rank", "officers" and "post".



ii. 8(1) states that officers holding a higher rank shall be senior to officers holding a lower rank, which is as clear as it can get.

iii. In contrast to 8(1) which determines seniority among officers holding different ranks, 8(2) determines the seniority among officers of a "particular rank" holding a post in accordance with their "order of selection" for appointment to that post.

iv. That 8(3) is meant to apply to the same situation dealt with by 8(2) is evident from the fact that 8(3) clearly states that it is subject to 8(2). The question that then arises is what are the circumstances envisaged under 8(3), and how do they interplay with 8(2).

v. The assumption underlying 8(2) is that officers from different feeding routes or paths, such as promotees, direct recruits and LDCE officers, may occupy the same rank. The seniority between these groups, or "inter-route seniority", shall be determined on the basis of the order of selection for appointment to the post held by them as laid down by 8(2). However, within each of these routes or paths i.e. the "intra-route seniority", shall be determined in accordance with the procedure laid down in 8(3).

vi. Accordingly, 8(3) (i)-(iii) respectively determine the intra-route seniority of promotees, direct recruits and temporary officers (probation officers). It stands to reason that 8(3)(iv) necessarily applies to the determination of the very same intra-route seniority since it specifically speaks of situations enumerated in 8(3) (i)-(iii) and states that subject to the said clauses, the intra-route seniority of officers belonging to the said three routes would be determined according to the date of their continuous appointment in that rank. Simply put, (a) in the event of intra-route seniority still not being fully resolved despite application of 8(3)(i)-(iii) or (b) after the application of the said methodology, for instance of a break in service the determinant will be the date of continuous appointment through application of 8(3)(iv).

vii. That 8(3)(iv) is in no way an alternative to or in conflict with or supersedes 8(2) is evident from the fact that 8(3)(iv) is placed under 8(3). In fact, 8(3)(iv) when read with the preamble of 8(3) reads in its entirety as follows: "Subject to the provisions of sub-rule (2) inter-se seniority amongst officers holding the same rank shall be as follows- Seniority of officers, subject to the provisions of clauses (i),



(ii) and (iii) shall be determined according to the date of their continuous appointment in that rank."

Clearly, the governing provision for inter-route seniority remains 8(2). 8(3)(iv) applies only to intra-route seniority.

viii. If 8(3)(iv) was meant to prevail over 8(2), it would have been placed as a sub-rule to 8 and not as a clause under 8(3). In fact, it would have said that notwithstanding anything contained in 8(2), Seniority of officers holding a particular rank shall be determined according to the date of their continuous appointment in that rank. This would have been anomalous to say the least since it would have been in direct conflict with the express language of 8(2). The interpretation sought to be advanced by the Petitioners in relation to 8(3)(iv) creates the very same conflict and absurdity through an invented conflict between 8(2) and 8(3)(iv) despite the situs/stage of application being clearly distinct.

ix. Since 8(2) is the sole umbrella provision that applies to inter-route seniority, it follows that the redrawing of the seniority list applying 8(2) is lawful and legal.

4. The next question that needs to be addressed is whether "order of selection" as mentioned in 8(2) receives any guidance from any provision of the Recruitment Rules. The answer is clearly in the negative, which necessarily takes us to the 1978 DOPT OM since that is the only document that expressly speaks of a process for determination of starting point in the recruitment roster for the purpose of seniority. In fact, this document lays down what amounts to completion of the selection process for each of the three routes, which makes it relevant for 8(2). Furthermore, for determining seniority of all officers appointed through all modes, the methodology provided under 8(2) is order of selection for appointment to that post. The determinant here is 'order of selection' for appointment and not just appointment. Thus, in case of a post with multi mode recruitment, the order in which the selection process of each mode is placed, would become the order of selection for the appointment to that post and for the said purposes, it is necessary to refer to the 1978 DOPT OM dated 24.06.1978.

5. Critically, the MHA's U.O. No. I-45022/83/2000-Pers.I dated 21.08.2000 containing the scheme for Assistant Commandant (GD) LDCE for CPOS expressly provides for seniority in point 9 as Seniority: "The personnel recruited through Ltd. Departmental Competitive Examination will be treated as part of promotions quota and their seniority will be with reference to the date of



selection as per DOP&T OM No. 22011/5/76 Estt. D dated 24.6.1978...." Also, the Offer of Appointment of some petitioners for appointment to the post of Assistant Commandant (GD) through LDCE expressly states in Clause 4 under Terms and Conditions that seniority will be determined with reference to the 1978 DOPT OM. Clearly, the application of the 1978 DOPT OM to the redrawing exercise has not been undertaken without notice. To make matters worse for the Petitioners, they have neither challenged the MHA's LDCE scheme nor clause 4 of their Offer of appointment on the ground that it places unlawful reliance on the 1978 DOPT OM to determine seniority. Therefore, this Hon'ble Court has no occasion in this batch of Petitions to determine if the reliance on the 1978 DOPT OM in the 2007 LDCE notification is unlawful or illegal. Consequently, not only is 8(2) the correct rule to be applied for redrawing the seniority list, the application of the 1978 DOPT OM too is apposite since that is the only document that sheds light on "order of selection" for the purposes of Rule 8(2).

6. The Petitioners reliance on Bobindra Kumar (2019) 16 SCC 652 is both misplaced and mischievous since that judgment is specific to members of the CRPF, and does not apply to members of all Forces. The term 'Member of the Force' referred to in para 20 of the judgment (SCC citation) is in reference to the term "Member of the Force" as defined in Section 2(d) of the CRPF Act, 1949 and discussed from para 14 of the said judgment (SCC citation). The judgment in Bobindra Kumar was dealing with Section 8(e) of the CRPF Act, 1949 which specifically provided that seniority shall be determined from the date of appointment to that rank, unlike the SSB Rules, 2003/2010. Under the CRPF Act, 1949 a person is considered to be appointed when he becomes a 'member of the force' as defined under Section 2(d) and he reads out the statement as contained in the schedule for enrolment as provided under Section 5 of the CRPF, Act, 1949. Thus the argument of the Petitioners that the term 'member of the force' as mentioned in para 20 of the judgment applies to all members of all the forces (para military forces) is a baseless argument. Consequently, the instant case is a sui generic case which must be determined on the basis of the RR of 2003/2010 read with the 1978 DOPT OM."

**Submissions of Ms. Malvika Trivedi, learned Senior Counsel, on behalf of the promotees/LDCEs appointees, petitioners in WP(C) Nos. 8796/2020 and 7064/2021**



20. Impugning the seniority lists issued on 21 September 2020 and 23 September 2020, Ms. Malvika Trivedi, learned Senior Counsel, submits that the SSB is grossly in error in fixing the *inter se* seniority among the promotees / LDCE appointees and direct recruits on the basis of the dates indicated in para 2 of the DOPT OM dated 24 June 1978 (*supra*). In this context, she first relies on paras 21 and 22 of the judgment of the Supreme Court in **Bobindra Kumar v Union of India**<sup>14</sup> and para 49 of the judgment of a Division Bench of this Court in **Jagmohan Vishwakarma v Union of India**<sup>15</sup>. She submits that **Bobindra Kumar** clearly holds that the 1978 OM does not apply to the Armed Forces and further that it has no application where seniority is not roster-based. The 1978 OM, she submits, deals with the starting point for fixing the roster and not with the concept of “order of selection”, which is the principle envisaged in Rule 8(2) of the 2003 RRs/Rule 5(2) of the 2010 RRs. As the seniority could not, therefore, be fixed on the basis of Rule 8(2) of the 2003 RRs or Rule 5(2) of the 2010 RRs and sub-clauses (i), (ii) and (iii) of Clause 8(3) of the 2003 RRs or Clause 5(3) of the 2010 RRs were not applicable, the *inter se* seniority among direct recruit ACs and LDCE/promotee ACs had necessarily to be worked out on the basis of Rule 8(3)(iv) of the 2003 RRs/Rule 5(3)(iv) of the 2010 RRs.

21. The SSB, submits Ms. Trivedi, has completely misunderstood the concept of “order of selection” as envisaged by Rule 8(2)/Rule 5(2) of the 2003/2010 RRs. If one refers to the vernacular Hindi equivalent of the Rules, one finds that the corresponding expression

<sup>14</sup> (2019) 16 SCC 652

<sup>15</sup> 2023 SCC OnLine Del 4494



for “order of selection” is “Chayan ka kram<sup>16</sup>”. This expression, she submits, clearly indicates that what was intended by use of the expression “order of selection” was the order of *inter se* merit. In as much as the 2003 RRs and the 2010 RRs made no reference to the starting point of the roster, she submits that the SSB was not justified in fixing seniority on the basis of the 1978 OM, which essentially fixed the point at which the roster was to commence.

22. Ms. Trivedi further submits that though, out of the several petitioners in WP (C) 8796/2020 and the petitioner in WP(C) 5247/2021, the reference to the DOPT OM of 24 June 1978 was contained only in appointment letters of six petitioners i.e. Petitioner Nos. 4, 5, 7, 12, 21 and 22 in WP (C) 8796/2020, who were LDCE promotees appointed prior to 2012, the mere reference to the said OM could not act as an estoppel against the law. Ms. Trivedi finally relies on paras 26, 27 and 28 of the judgment of the Supreme Court in *Rohitash Kumar v Om Prakash Sharma*<sup>17</sup> and paras 8 and 9 of the judgment of the Division Bench of this Court in *Subodh Rokade v Union of India*<sup>18</sup>.

### **Submissions of Ms. Nidhi Raman for the SSB/Union of India**

23. Supplementing the submissions advanced by other learned Counsel, Ms. Nidhi Raman, learned CGSC appearing for the SSB, submits that seniority has, since long, been fixed on the basis of the

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<sup>16</sup> चयन का क्रम

<sup>17</sup> (2013) 11 SCC 451

<sup>18</sup> 2021 SCC OnLine Del 2812



date of completion of selection as envisaged in the 1978 OM, treating it as representative of the “order of selection”. Such a long-standing practice, she submits, should not be unsettled by the Court. She relies, for the said purpose, on paras 11 and 12 of the judgment of the Supreme Court in *Rohitash Kumar*, para 11 of *A.K. Nigam v Sunil Misra*<sup>19</sup> and para 13 of *Bishan Sarup Gupta v Union of India*<sup>20</sup>.

### Analysis

24. Having thus set out the rival contentions of learned Counsel, we proceed to address the issues that arise, *seriatim*.

25. Applicability of the 2003 RRs and 2010 RRs after the promulgation of the 2012 RRs – Effect of supersession clause in preamble to 2010 RRs and 2012 RRs – Applicability of *Parmar*, or the DOPT OMs dated 7 February 1986, 3 July 1986, 4 March 2014 and 13 August 2021

25.1 There is a significant difference in the supersession clause as contained in the preamble to the 2010 RRs, vis-à-vis the 2003 RRs, and in the 2012 RRs, vis-à-vis the 2010 RRs. At the cost of repetition, we may reproduce these preambular clauses thus:

#### Preamble to 2010 RRs

“In exercise of the powers conferred by sub- section (1) read with clauses (a) and (c) of sub- section 2 of Section 155 of the Sashtra Seema Bal Act, 2007 (53 of 2007) and *in supersession of the Special Service Bureau Assistant Commandant Group ‘A’ (General Duty) post Recruitment Rules 2003* except as respects things done or omitted to be done before such supersession, the Central

<sup>19</sup> 1994 Supp (2) SCC 245

<sup>20</sup> (1975) 3 SCC 116



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Government hereby makes the following rules to regulate the method of recruitment to the post of Assistant Commandant (General Duty) Group 'A' posts in the Sahastra Seema Bal under the Ministry of Home Affairs, namely :-”

Preamble to 2012 RRs

“In exercise of the powers conferred by sub- section (1) read with clauses (a) and (c) of sub- section 2 of Section 155 of the Sahastra Seema Bal Act, 2007 (53 of 2007) and in supersession of Sahastra Seema Bal Group 'A' Combatised (General Duty) Officers Recruitment Rules 2004 in so far as it relates to the posts of 2<sup>nd</sup>-In-Command and Deputy Commandant *and Sahastra Seema Bal Asst Commandant Group 'A' (General Duty) Combatised post Recruitment Rules, 2010, in so far as it relates to the post of Asst Commandant to regulate the method of recruitment to the Group 'A' Combatised (General Duty) posts in the Sahastra Seema Bal* under the Ministry of Home Affairs, namely :-”

Thus, while the 2010 RRs supersede the 2003 RRs with no further caveat, the 2012 RRs supersede the 2010 RRs only “insofar as it relates to the post of Asst Commandant *to regulate the method of recruitment to the Group 'A' Combatised (General Duty) posts in the Sahastra Seema Bal*”.

**25.2** We are guided, in thus understanding the preamble to the 2012 RRs, by the fact that there is no comma after the words “insofar it relates to the post of Assistant Commandant”. The words “*to regulate the method of recruitment to the Group 'A' Combatised (General Duty) posts in the Sahastra Seema Bal*”, therefore, have to be read along with the words “insofar it relates to the post of Assistant Commandant” as additionally clarifying the extent to which the 2012 RRs supersede the 2010 RRs. The importance of a comma, in understanding a statute, stands underscored by the judgment of the



Supreme Court in *Colour-Chem Ltd v A.L. Alaspurkar*<sup>21</sup>, in which the positioning of a comma was made the basis to interpret the concerned statutory provision.

**25.3** It has to be presumed that, while framing and notifying the 2012 RRs, the authorities were aware of the exact words used in the 2010 RRs. The afore-quoted caveat, whereby the extent to which the 2012 RRs superseded the 2010 RRs was specifically limited must, therefore, be regarded as having been deliberately inserted.

**25.4** The supersession of the 2003 RRs by the 2010 RRs is, therefore, wholesale. After the 2010 RRs, the 2003 RRs must be deemed to have ceased to exist and become inoperable. As against this, the 2012 RRs superseded the 2010 RRs *only to the extent of regulation of the method of recruitment to Group A posts, including the post of AC. Seniority follows recruitment. Fixation of seniority would only be of personnel who already stand recruited. This is elementary.*

**25.5** It is apparently for this reason that the authorities did not deem it necessary to include, in the 2012 RRs, any provision relating to seniority, as Rule 5 of the 2010 RRs remained unaffected by the 2012 RRs and, therefore, continued to apply.

**25.6** This is also, apparently, the manner in which the SSB/Union of India itself understands the preamble to the 2012 RRs as, for the years



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2003 to 2012-2013, the SSB has itself fixed *inter se* seniority among ACs, both in the draft Seniority List dated 5 June 2018 as well as in the impugned Seniority Lists dated 21 September 2020 and 23 September 2020 on the basis of the 2003 RRs and the 2010 RRs. Qua the legal position that seniority, for the period 2003 to 2012-2013, i.e. prior to the notification of the 2012 RRs, would have to be fixed on the basis of the RRs which were in effect during that period, and not on the premise that the 2012 RRs entirely superseded the 2010 RRs, therefore, the SSB/Union of India also agrees. The dispute with the Union of India, for this period, is only whether the applicable Rule would be Rule 5(2) [as the Union of India would contend] or Rule 5(3)(iv), as the petitioners would contend.

25.7 We, therefore, reject the contention that the 2012 RRs superseded, in their entirety, the 2010 RRs. The supersession was only to the extent of regulation of the method of recruitment to the post of AC. Rule 5 of the 2010 RRs continued, therefore, to apply even after the 2012 RRs were notified.

**25.8** We also reject the contention that Rule 5 of the 2010 RRs, or, for that matter, Rule 8 of the 2003 RRs, can be treated as a provision relating to “method of recruitment” to the post of AC. The mere use of the expression “method of recruitment” in the preamble to the 2003 RRs or the 2010 RRs cannot, in our view, be determinative in this regard. The expression “method of recruitment” is well understood. A provision stipulating the manner in which seniority *amongst the recruited personnel* is to be determined cannot, in any manner of



understanding, be regarded as a provision governing the “method of recruitment”. We do not deem it necessary to burden this judgment, in this regard, with authorities on the ambit of the expression “recruitment” or “method of recruitment”, both of which expressions are well understood in service jurisprudence.

**25.9** We, therefore, reiterate our finding that Rule 5 of the 2010 RRs remained intact and applicable even after the promulgation of the 2012 RRs.

**25.10** Resultantly, the submission that *inter se* seniority among direct recruit, promotee and LDCE appointee ACs had to be governed by the principles contained in *Parmar*, or the DOPT OMs dated 7 February 1986, 3 July 1986, 4 March 2014 and 13 August 2021, is also rejected. As there were RRs in place, stipulating the manner in which seniority was to be fixed, no occasion arises to invoke the general principles relating to fixation of security as contained in these executive instructions. It is trite that recourse to such executive instructions is permissible only where the Rules are silent.<sup>22</sup>

**25.11** The 2010 RRs, however, superseded, in their entirety, the 2003 RRs. Inasmuch as the Seniority List, fixing *inter se* seniority among the direct recruit, promotee and LDCE appointee ACs was issued, in draft form, for the first time on 5 June 2018, which was finalised in the form of the impugned final Seniority Lists dated 21 September 2020 and 23 September 2020, the only RRs which would be



applicable would be the 2010 RRs. The 2003 RRs could not apply, as they stood superseded, in their entirety, by the 2010 RRs.

**26. Issue in controversy**

The controversy has, therefore, to be resolved solely by reference to the 2010 RRs. The precise question that has to be addressed is, therefore, whether seniority, among the direct recruit, LDCE appointee and promotee ACs would be determinable on the basis of Rule 5(2), or Rule 5(3)(iv), of the 2010 RRs.

**27. Nature of Rule 5(3)(iv) – is it limited to fixation of *inter se* seniority of ACs recruited by any one particular mode of recruitment?**

**27.1** One of the contentions advanced, especially by Mr. Sai Deepak, is that Rule 5(3)(iv) is to be treated as applicable only for fixation of *inter se* seniority within ACs recruited by any one particular mode of recruitment. In other words, the contention is that Rule 5(3)(iv) applies only for fixing of *inter se* seniority within ACs who are directly recruited, or promoted, or appointed via LDCE *vis-à-vis* other ACs appointed by the same mode of recruitment, and not for fixation of *inter se* seniority *among* direct recruit, promotee and LDCE appointee ACs.

**27.2** We are unable to agree. Rule 5(3)(iv) does not, expressly or by necessary implication, limit its applicability to determination of *inter se* seniority within officers recruited by any one particular mode of



recruitment or exclude its applicability to fixation of *inter se* seniority among ACs as a whole, covering all modes of recruitment.

**27.3** Much has been sought to be made, by Mr. Sai Deepak, of the placement of Rule 5(3)(iv) below Rule 5(3)(i) to (iii). It has been sought to be contended that, if Rule 5(3)(iv) was also to operate as a proviso, or an exception, to Rule 5(2), it would have figured immediately below Rule 5(2). We are unwilling to accord, to the mere placement of clause (iv) of Rule 5(3), more than is its wont. Rule 5(3) is clear and unambiguous in its terms. Moreover, it is a clause of Rule 5(3), which itself is made subject to Rule 5(2). The subjection to Rule 5(2) applies, therefore, to all the clauses of Rule 5(3), including clause (iv). Moreover, clause (iv) starts with the words “Seniority of officers”. These words are also compendious in scope. They do not permit restriction, of their ambit, to officers recruited by any one particular mode of recruitment.

**27.4** To our mind, therefore, Rule 5(3)(iv) of the 2010 RRs would apply only if *inter se* seniority of ACs, covering all modes of recruitment, cannot be determined under Rule 5(2). We reject the contention that Rule 5(3)(iv) applies only for *inter se* determination of seniority among ACs recruited by any one particular mode of recruitment.

**27.5** The sequitur, viewed from another angle is, therefore, that, if the *inter se* seniority among direct recruit, promotee and LDCE appointee ACs cannot be determined under Rule 5(2), it would have to



be determined in accordance with Rule 5(3)(iv). In that event, the impugned Seniority Lists, which have been drawn up on the basis of Rule 5(2), read with the 1978 DOPT OM, would have to be set aside.

**28. Applicability of Rule 5(2) of the 2010 RRs read with the 1978 OM**

**28.1** We, therefore, come to what may be called the “meat of the matter”, which is as to whether the *inter se* seniority among ACs recruited by direct recruitment, promotion and LDCE, could have been fixed, as the SSB has done in the impugned Seniority Lists, on the basis of Rule 5(2) read with the 1978 OM.

**28.2 Re. Plea of estoppel based on reference to 1978 DOPT OM in appointment orders of six of the LDCE appointees**

**28.2.1** The appointment orders issued in the case of six of the LDCE appointees stated that their seniority would be determined on the basis of the 1978 DOPT OM. A plea of estoppel has been advanced on this basis, to argue that the LDCE appointees are, thereby, estopped from disputing the applicability of the 1978 OM.

**28.2.2** We do not agree. A selective incorporation, in the appointment letters of six of the LDCE appointees, of a reference to the 1978 OM cannot, in any case, bind all the ACs who contest the applicability of the OM. Nor can the Court treat six of the LDCE appointees differently from all other ACs in the present batch of petitions. We see no reason, in fact, why a selective incorporation was made, in the



appointment letters of six of the LDCE appointees alone, to the effect that their seniority would abide by the 1978 DOPT OM.

28.2.3 The plea of estoppel, raised on the basis of the reference, in the appointment letters of six of the LDCE appointee ACs, to the 1978 DOPT OM as the basis of their seniority is, therefore, rejected.

### 28.3 Re. SO 06/2001

**28.3.1** Reliance has also been placed on the Clause, in SO 06/2001, whereby LDCE was introduced as one of the modes of recruitment to the post of AC in the SSB, stipulating that LDCE appointees would be treated as a part of the promotion quota and their seniority would be with reference to the date of selection as per the 1978 DOPT OM.

**28.3.2** No doubt, the stipulation to this effect, as contained in SO 06/2001, does indicate that, at the time of introduction of the LDCE as a mode of recruitment to the post of AC, seniority was envisaged as being determinable on the basis of the 1978 DOPT OM. At the same time, it cannot be forgotten that SO 06/2001 was issued at a time when there were no RRs in place. The stipulation to the effect that seniority of LDCEs would be determinable on the basis of the 1978 DOPT OM, as contained in SO 06/2001 has, therefore, to cede place to the provisions in the RRs, following the established principle that administrative instructions cannot predominate over Recruitment Rules. The issue of whether the 1978 DOPT OM can constitute the basis for fixing *inter se* seniority among direct recruit, LDCE



appointee and promotee ACs has, therefore, to be determined on the basis of the RRs, and the stipulation, in SO 06/2001, to the effect that the 1978 DOPT OM would be the basis of fixation of seniority cannot determine the issue to any substantial extent.

#### **28.4 The decision in *Bobindra Kumar***

**28.4.1** One of the main planks of Ms Trivedi's submissions was that the applicability of the 1978 DOPT OM stands conclusively foreclosed by the judgment of the Supreme Court in *Bobindra Kumar*. It becomes necessary, therefore, to examine the said decision.

**28.4.2** The issue before the Supreme Court in *Bobindra Kumar* was the *inter se* seniority between direct recruit and promotee Sub-Inspectors<sup>23</sup> in the CRPF, of which the SSB was an offshoot. The Union of India had placed the direct recruit SIs above the promotee SIs in the seniority list. The promotee SIs challenged this placement, before this Court, relying, for the purpose, on Rule 8(e) of the CRPF Rules, 1955<sup>24</sup>, which read thus:

**“8. Seniority. –**

(e) A person promoted to a higher rank and a person recruited direct to the same rank shall have their seniority from the date of appointment to that rank subject to the condition that if both were appointed on the same date, the former (promotee) shall be senior:

Provided further that if the date of confirmation is the same their seniority immediately before such confirmation shall remain unaffected.”

<sup>23</sup> “SIs” hereinafter

<sup>24</sup> “the 1955 Rules” hereinafter



Except for the fact that Rule 5(3)(iv) of the 2010 RRs uses the expression “continuous appointment”, whereas Rule 8(e) of the 1955 Rules uses the expression “date of appointment”, it is clear that the two Rules are substantially similar. This minor difference cannot amount to much, as continuous appointment<sup>25</sup> would, of necessity, follow the date of initial appointment.

**28.4.3** There is, however, one serious difference between the Rule position as it obtains before us and the Rule position before the Supreme Court in *Bobindra Kumar*. *Bobindra Kumar* makes no reference to any Rule which is similar to Rule 5(2) of the 2010 RRs. In other words, there was, in *Bobindra Kumar*, no overriding Rule which envisaged fixation of seniority on the basis of order of selection, and to which Rule 8(e) would be subject, as in the present case. Clearly, therefore, the Supreme Court, in *Bobindra Kumar* was not encountering a Rule position which is similar to that before us.

**28.4.4** Returning to the facts in *Bobindra Kumar*, the High Court ruled in favour of the promotees, applying Rule 8(e) of the 1955 Rules. Aggrieved thereby, the direct recruits appealed to the Supreme Court.

**28.4.5** Before the Supreme Court, the Union of India relied on the 1978 DOPT OM, on the basis of which, in conjunction with Rule 5(2) of the 2010 RRs [equivalent to Rule 8(2) of the 2003 RRs], the SSB

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<sup>25</sup> The word “appointment”, in fact, appears to be a malapropism, as we would observe hereinafter.



has, in the present case, issued the impugned final Seniority Lists. It was contended that, applying the 1978 DOPT OM and DOPT OM dated 4 March 2014, direct recruits were entitled to seniority from the date of the appointment whereas promotees would be entitled to seniority from the date of announcement of the results of the DPC. Once these respective dates of seniority were fixed, the Union of India contended before the Supreme Court in **Bobindra Kumar**, that seniority had to be determined by applying the quota-rotta rule in accordance with the DOPT OM dated 4 March 2014.

**28.4.6** The Supreme Court ruled against the Union of India. It held that Rule 8(e) of the 1955 Rules required seniority to be determined on the basis of date of appointment. However, the Supreme Court went on to note that, for SIs, Rule 5 of the 1955 Rules required them to complete certain formalities before they could be appointed as SI. The offer of appointment issued to the SIs, therefore, could not be treated as the order of the appointment, as the actual appointment would fructify only after the formalities were completed. Owing to this circumstance, the Supreme Court held that the actual appointment of the direct recruit SIs was later, in point of time, to the appointment of the promotees. Following this, the Supreme Court held that the High Court had correctly granted relief to the promotees and, therefore, dismissed the appeal of the direct recruits.

**28.4.7** The actual *ratio decidendi* of **Bobindra Kumar**, to our mind, would not be of assistance in deciding the controversy in issue, as the Supreme Court was dealing with a dispute which was substantially



different in tone and colour to that which is before us. Unlike ACs, SIs, who were before the Supreme Court, had to undergo formalities before they could be treated as appointed as SI. Further, there was, before the Supreme Court, no Rule similar to Rule 5(2) of the 2010 RRs.

**28.4.8** However, paras 19 and 20 of the report in ***Bobindra Kumar*** are relevant:

“19. The judgment in ***Rohitash Kumar*** relied upon by the High Court is not applicable to the members of the CRPF as the date of appointment is not the date of commencement of training in the Rules. The BSF Rules are materially different from the Rules applicable to the members of CRPF. Rule 8(e) of the Rules clearly stipulates that a person promoted to a higher rank and a person recruited direct to the same rank shall have their seniority from the date of appointment. Therefore, a person appointed by way of direct recruitment or promotion to the post of Sub-Inspector, his seniority will be fixed as per the date of appointment. Only in the case that both direct recruits and promotees are appointed on the same date, promotees were to rank senior. Since, the date of appointment is not 5-10-2009 but the date they completed the formalities after accepting the offer of appointment, their date of appointment is later than the date of promotion of the promotee Sub-Inspectors.

20. ... We also find that the Office Memorandum dated 24-6-1978 referred to by Mr Nataraj is not applicable to the members of the Force as admittedly, there is no roster for the purpose of recruitment and seniority. Such Office Memorandum deals with starting point in the recruitment roster for the purpose of seniority. Still further, the Office Memorandum dated 4-3-2014 again deals with fixation of seniority where there is roster of vacancies.”

(Emphasis supplied)

Thus, in these paras, the Supreme Court distinguished the BSF Rules, with which the Supreme Court was concerned in ***Rohitash Kumar***. More importantly, however, the Supreme Court held that the DOPT



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OM dated 24 June 1978 was not applicable to the CRPF “as, admittedly, there was no roster for the purposes of recruitment and seniority” in the CRPF.

**28.4.9** We are unable, therefore, to accept the submission of Mr Sai Deepak and Mr Chhibber that, as the facts in *Bobindra Kumar* were different, the statement of the law with respect to the applicability of the 1978 DOPT OM would not apply to the present case. The Supreme Court has held the 1978 DOPT OM not to apply to the CRPF as there was no roster for the purposes of recruitment and seniority in the CRPF. We have gone through the pleadings of the Union of India in the present case, and do not find any reference to a roster for recruitment and seniority in the SSB either. Indeed, as the SSB was merely an offshoot of the CRPF, the factual position regarding non-existence of a roster for recruitment and seniority in the CRPF would apply equally to the SSB.

**28.4.10** Resultantly, we are in agreement with Ms. Trivedi that the 1978 DOPT OM cannot be invoked in the present case, as, in the words of the Supreme Court in *Bobindra Kumar*, the said OM “deals with starting point in the recruitment roster for the purpose of seniority”. The same position was found to apply with respect to the DOPT OM dated 4 March 2014 which, too, was found to deal “with fixation of seniority where there is roster of vacancies”.



**28.4.11** The impugned final Seniority Lists, having been prepared on the premise that the 1978 DOPT OM applied, cannot therefore, sustain.

**28.4.12** The challenge to the impugned final Seniority Lists is, therefore, bound to succeed.

**28.5** The decision in *Jagmohan Vishwakarma*

**28.5.1** *Jagmohan Vishwakarma*, rendered by a coordinate Division Bench of this Court, is also relevant.

**28.5.2** The petitioners, in *Jagmohan Vishwakarma*, were direct recruit ACs in the Indo Tibetan Border Police<sup>26</sup>. Seniority of officers in the ITBP was admittedly governed by Rule 8 of the 1955 Rules. As in the case of the SSB, LDCE was introduced as a mode of recruitment for the post of AC on 21 August 2000, and 17% of the vacancies were reserved for LDCE appointees. SO 06/2001 applied to the ITBP as well.

**28.5.3** RRs, for the post of AC in the ITBP were first notified in 2010, as the “Indo-Tibetan Border Police Force, General Duty Cadre (Group A posts) Recruitment Rules, 2010”<sup>27</sup>. The quota of vacancies allocated for direct recruits, LDCE appointees and promotees was the same as in the SSB, i.e. 50% by direct recruitment, 33% by promotion and 17% by LDCE. The 2010 ITBP RRs did not, however, contain any

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<sup>26</sup> "ITBP" hereinafter

<sup>27</sup> "the 2010 ITBP RRs" hereinafter



provision governing fixation of seniority amongst ACs recruited by these various modes of recruitment. From the judgment, it appears that seniority amongst ACs recruited through various modes of recruitment was governed by Rule 8 of the CRPF Group 'A' (General Duty) Officers Recruitment Rules, 2001<sup>28</sup>, which was identical to Rule 5 of the 2010 RRs with which we are concerned. The Division Bench held, in paras 52 and 53 of the judgment, thus:

“52. The principle of determination of *inter se* seniority amongst direct recruits & promote officers that emerge from the aforesaid discussion of Rules and Notifications makes it clear that for the purpose of fixation of *inter se* seniority, the date to be reckoned for the direct recruits is “the date of appointment”.

53. It is not disputed herein that all the petitioners who are Direct Recruits, had joined the service had got promoted in the months of May and June of 2012, while all the respondents had assumed their position on promotion through LDCE/promotion prior to the petitioners in the year 2011-2012. The *inter se* seniority of the petitioners has been fixed correctly in accordance with the CRPF Act, CRPF Group “A” General Cadre Recruitment Rules, 2010 and relevant Office Memorandums.”

**28.5.4** Thus, a coordinate Division Bench has, in the case of a dispute which is similar to that before us, held that seniority among direct recruit, promotee and LDCE appointee ACs was required to be fixed on the basis of their dates of appointment.

**28.5.5** Having said that, it needs to be noted that there was no specific consideration, in *Jagmohan Vishwakarma*, of the applicability of Rule 8(2) of the 2003 CRPF RRs.



## 29. The sequitur

**29.1** The sequitur to the above discussion is that, as the 1978 DOPT OM does not apply, and there is no other basis for determining the “order of selection” for the purposes of Rule 5(2) of the 2010 RRs, the said sub-Rule becomes unworkable for the purposes of determining *inter se* seniority among ACs recruited by direct recruitment, LDCE and promotion. Rules 5(3)(i) to (iii) are, in any case, not applicable to fixation of *inter se* seniority among ACs recruited by various modes of recruitment. The *inter se* seniority has, therefore, necessarily to be fixed on the basis of Rule 5(3)(iv).

**29.2** The OM dated 5 June 2018, where under the draft Seniority List was issued by the SSB, specifically states that, for the period from 2003 to 2012-2013, “all officers have been placed in the seniority list from the date of their continuous appointment in the rank i.e. 2003 to 2012-2013”. In other words, *inter se* seniority among ACs recruited under the various modes of recruitment had been fixed, in the draft Seniority List, for the period 2003 to 2012-2013, in accordance with Rule 5(3)(iv) of the 2010 RRs. This, in our view, was the correct mode of determining seniority.

**29.3** The same OM, however, goes on to note that, for the period 2013-2014 to 2015-2016, seniority was determined in accordance with the DOPT OM dated 4 March 2014 and the judgment of the Supreme Court in *Parmar*. This, in our view, was incorrect. Occasion to seek recourse to the DOPT OM dated 4 March 2014, or the



judgment in *Parmar*, would arise only if the applicable Rules are silent with respect to the manner of fixing of seniority. Inasmuch as Rule 5 of the 2010 RRs remained undisturbed even after the promulgation of the 2012 RRs, *inter se* seniority among ACs, even after promulgation of the 2012 RRs, had to be on the basis of continuous appointment, as had been done in the draft Seniority List for the period 2003 to 2012-2013.

### Conclusion

30. As a result, we hold thus:

- (i) The 2010 RRs superseded, in their entirety, the 2003 RRs. As such, after promulgation of the 2010 RRs, the 2003 RRs ceased to have effect. Inasmuch as the first Seniority List of ACs, albeit in draft form, was issued by the SSB in 2018, it could not have been based on the 2003 RRs.
- (ii) The 2012 RRs did not supersede Rule 5 of the 2010 RRs, which continued to remain applicable.
- (iii) As such, the Seniority List, in 2018, had to be prepared on the basis of the 2010 RRs.
- (iv) The 1978 DOPT OM could not constitute the basis for determining the “order of selection” for the purposes of Rule 5(2) of the 2010 RRs.



(v) For want of any other guidance, to be found in the 2010 RRs or elsewhere, for determining the “order of selection”, *inter se* seniority among the ACs could not be fixed in accordance with Rule 5(2) of the 2010 RRs.

(vi) *Inter se* seniority among the ACs was, therefore, to be determined on the basis of Rule 5(3)(iv) of the 2010 RRs, on the basis of “continuous date of appointment”.

(vii) This principle would apply both for the period 2003 to 2012-2013, as well as thereafter. The DOPT OM's dated 7 February 1986, 3 July 1986, 4 March 2014 and 13 August 2021, and the judgment of the Supreme Court in *Parmar* could not constitute the basis of fixing *inter se* seniority among the ACs.

(viii) Resultantly,

(a) the impugned Seniority Lists dated 21 September 2020 and 23 September 2020, are quashed and set aside, and

(b) the *inter se* seniority amongst the ACs

(i) is held to have been correctly fixed in the Seniority List dated 5 June 2018, for the period 2003 to 2012-2013, but

(ii) is wrongly fixed for the period 2013-2014 to 2015-2016, for which period, too, *inter se* seniority would have to be fixed on the basis of continuous



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appointment, in accordance with Rule 5(3)(iv) of the 2010 RRs.

**31.** All these writ petitions stand disposed of accordingly, with no orders as to costs.

**C. HARI SHANKAR, J.**

**AJAY DIGPAUL, J.**

**OCTOBER 28, 2025/aky/yg**