

(2022) 04 RAJ CK 0094

In the Rajasthan High Court

Case No : D.B. Civil Writ Petition No. 351 Of 2021

Ankit Khandelwal And Other

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 25-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2022) 04 RAJ CK 0094

Hon'ble Judges : Prakash Gupta, J;Anoop Kumar Dhand, J

Bench : Division Bench

Advocate : R.N. Mathur, Anurag Kalavatiya, Sushil Daga, Anil Mehta, Banwari Lal Sharma, Tej Prakash Sharma

Final Decision : Dismissed

Judgement

Anoop Kumar Dhand, J

Instant petition has been directed against the impugned order dated 15.12.2020 passed by the Central Administrative Tribunal, Jaipur Bench, Jaipur (hereinafter referred as 'the Tribunal') by which the original application filed by the respondents No.6 to 21 (hereinafter referred as 'the private respondents') has been allowed, the impugned draft/provisional seniority list has been set aside and the official respondents No.1 to 5 have been directed to revisit the draft seniority list in the light of the current legal position, including the judgment delivered by Hon'ble the Apex Court in the case of K. Meghachandra Singh & Ors. Vs. Ningam Siro & Ors. in Civil Appeal No.8833- 8835/2019 decided on 19.11.2019 and publish a fresh seniority list, within 3 months from the date of receipt of a certified copy of the order.

Brief facts of the case are that the private respondents submitted an original application before the Tribunal for quashing the draft seniority list dated 11.03.2020 by mentioning the facts that they were appointees of the year 2011/2012 and 2013 on the post of Lower Division Clerks/Upper Division Clerks

in ESI Corporation in Gujarat/Punjab/Maharashtra Regions. Under the Inter Regional Transfer Policy (for short 'IRT policy') they were transferred to the Rajasthan Region in the month of August/October, 2016, pursuant to which they joined in Rajasthan Region on different dates in the month of August, 2016. It was the case of the private respondents that the respondent No.2-Director General, Department of Employees State Insurance Corporation issued an Inter Regional Transfer Policy in respect of Ministerial Staff upto Assistant Cadre on 05.03.2013, which provides that the officials who have completed three years service, including the period spent on probation, in their present region would only be eligible for applying for Inter Regional Transfer under the policy. Clause 5 of the policy provides criteria for fixation of seniority of Inter Regional Transfer cases, according to which seniority of transferee would be fixed below all the employees appointed during the year in the recipient region and the inter-se seniority of the parent region will remain undisturbed. It was the case of the private respondents that they were eligible for Inter Regional Transfer in terms of the aforesaid policy. Hence, they sought their transfer from Gujarat/Punjab/Maharashtra Regions to Rajasthan Region and their requests were accepted by the official respondents and they were transferred to the Rajasthan Region vide order dated 15.07.2016 and they joined their duties in Rajasthan Region on different dates in the month of August/October, 2016.

It was pleaded by the private respondents in their original application that a combined advertisement for recruitment on the post of Steno, Upper Division Clerk (for short 'the UDC') and MTS in Rajasthan Region was issued by the respondent No.3-Regional Director, ESI Corporation, Jaipur, wherein the vacancies for the post of UDC were shown as 81 and the last date of submitting the applications was 06.01.2016. The examination for the post of UDC was conducted in the month of March, 2016. The petitioners were selected and given appointment in the month of December, 2017 and pursuant thereto all the petitioners joined the services on the post of UDC on 29.12.2017/01.01.2018.

Thereafter, the respondent No.4-Deputy Director, (Admn.), ESIC, Rajasthan published a draft seniority list on 26.06.2019 placing the petitioners above the private respondents in complete violation of IRT Policy dated 05.03.2013 and also in violation of the basic principles of Service Jurisprudence that the seniority cannot be conferred upon an employee who has not even borne in cadre. The private respondents joined the Rajasthan Region in pursuance of their transfer order dated 15.07.2016 in the month of August/October, 2016, whereas the petitioners were borne in the cadre only after joining on 29.12.2017/01.01.2018.

Against the draft seniority list, the private respondents submitted their objections on 22/07/2019 stating therein that this draft seniority list dated 26.06.2019 is contrary to the IRT policy and they submitted a judgment of Pratibha Rani and Ors. Vs. Union of India & Ors., Civil Appeal No.3792 of 2019 decided on 10.04.2019, wherein it was held by the Hon'ble Supreme Court that the services rendered in the previous region prior to transfer on compassionate ground, will

be counted towards service for eligibility for consideration for promotion. Their objections were not considered and in the meantime, the judgment of K. Meghachandra Singh (supra) came in which the Hon'ble Apex Court observed thus:-

"These three judgments and several others with like enunciation on the law for determination of seniority makes it abundantly clear that under Service Jurisprudence, seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre. In our considered opinion, the law on the issue is correctly declared in J.C. Patnaik (supra) and consequently we disapprove the norms on assessment of inter-se seniority, suggested in N.R. Parmar (supra). Accordingly, the decision in N.R. Parmar is overruled. However, it is made clear that this decision will not affect the inter-se seniority already based on N.R. Parmar and the same is protected. This decision will apply prospectively except where seniority is to be fixed under the relevant Rules from the date of vacancy, the date of advertisement."

Thereafter, some of the private respondents submitted representations on 22.11.2019 addressing to the Deputy Director (Admn.), ESIC, Rajasthan drawing his attention to the aforesaid judgment of K. Meghachandra Singh (supra) and requested him to determine their seniority. When the representations were not decided by the respondent No.4, the private respondents were under the apprehension that the DPC would be conducted by the official respondents without determination of the final seniority list as per Rules and Policies and the basic principles of Service Jurisprudence as well as against the IRT Policy. So, they approached the Tribunal by way of filing Original Application No. 291/777/2019 by saying that the draft seniority list dated 26.06.2019 was against the basic principles of Service Jurisprudence as well as against the IRT Policy. The Tribunal dismissed the said Original Application by treating the same as premature vide order dated 20.12.2019 by observing thus:-

"Vide office memorandum dated 26.06.2019, the respondents circulated a tentative seniority list of the cadre of Upper Division Clerk and objections thereto were invited from all concerned by 26.07.2019.

Concededly, the applicants have submitted their objections pursuant to the tentative seniority list within the stipulated period. The said objections are still pending with the respondents and they are yet to finalise the seniority list.

The present Original Application has been filed by the applicants challenging the tentative seniority list.

In our considered view, the Original Application is wholly misconceived being premature.

Accordingly, the Original Application is dismissed being premature."

Thereafter, the objections of the private respondents to the draft seniority list dated 26.06.2019 were rejected by the respondents vide order dated 11.03.2020

and again a draft seniority list dated 11.03.2020 was prepared and issued. Again, the private respondents approached the Tribunal by way of filing Original Application No. 194/2020. The Tribunal vide order dated 23.06.2020 while allowing the said Original Application set-aside the impugned seniority list and directed the official respondents (respondents No. 1 to 5) to revisit the draft seniority list in the light of the current legal position, including the judgment of K.Meghachandra Singh (supra) and publish a fresh seniority list, within a period of three months.

Feeling aggrieved by the said order dated 23.06.2020 passed by the Tribunal, the petitioners approached this Court by way of filing batch of writ petitions with the lead case of Ankit Khandelwal and Ors. Vs. The Union of India and Ors. (DB Civil Writ Petition No. 7187/2020) mentioning therein that they were not parties before the Tribunal and they did not get any opportunity of hearing.

This Court vide order dated 15.10.2020 while allowing batch of writ petitions set-aside the order dated 23.06.2020 passed by the Tribunal and directed the Tribunal to dispose of the matter afresh on merits after affording opportunity of hearing to both the parties and the parties were directed to appear before the Tribunal on 19.10.2020. Thereafter, the Tribunal after hearing both the parties while disposing of the said Original Application vide order dated 15.12.2020 set aside the impugned seniority list and the official respondents (respondents No. 1 to 5) were directed to revisit the draft seniority list in the light of the current legal position, including the judgment of the Hon'ble Supreme Court in K.Meghachandra Singh (supra), and publish a fresh seniority list, within three months from the date of receipt of a certified copy of the order.

Against the order dated 15.12.2020 passed by the Tribunal the petitioners have submitted instant petition with the following prayers:-

"That this Hon'ble Court may most graciously be pleased to-

- i. Issue an appropriate writ/order/direction thereby quashing and setting aside the Impugned Final Order dated 15.12.2020 passed by Ld. Tribunal in O.A. No. 291/194/2020 titled Rajkumar Meena & Ors. Vs. Union of India & Ors.
- ii. Issue an appropriate writ/order/direction, directing the Respondent No.1 to 4 to not take any action in pursuance of the Final Order dated 15.12.2020 passed by Ld. Tribunal and any action/order passed in pursuance of the Final Order dated 15.12.2020 may also kindly be quashed and set aside;
- iii. Issue an appropriate writ/order/direction, directing the Respondent No.1 to 4 to finalise the first draft seniority list dated 26.06.2019 (Annexure-3) as it is and accord seniority to the Petitioners herein over and above the Respondents no. 6 to 21 herein, and also direct the Respondents No. 1 to 4 to conduct review DPC for the year 2020 at the earliest for promoting the Petitioners on the post of Assistant/Head Clerk and to accord all consequential benefits to the Petitioners from the date their counterparts have been promoted in other regions of ESIC in

India.

iv. To issue any other writ, order or direction which this Hon'ble Court may deem fit and proper under the facts circumstances of the case, so that justice be met;"

On behalf of the petitioners it has been argued by the learned counsel for the petitioners that even though the petitioners were appointed on 29.12.2017/01.01.2018, they were appointed against the vacancy of the year 2015-2016 and that's why they have been placed higher in the seniority over the private respondents who were transferred in Rajasthan Region vide IRT Order dated 15.7.2016 and thereafter they joined the Rajasthan Region in the Months of August/October, 2016 in accordance with the existing DoPT Rules dated 04.03.2014.

Learned counsel for the petitioners further argued that the order of the Tribunal is erroneous as it failed to consider that while preparing the draft seniority list, the recruitment year of the candidates is relevant and not the year in which they joined the cadre. Counsel further argued that the impugned draft seniority list was prepared strictly in terms of the Office Memorandum dated 4.3.2014 which was based on the Judgment of Hon'ble Supreme Court delivered in the case of Union of India & Ors. v. N.R. Parmar, reported in 2012 (13) SCC 340. Counsel further submitted that on the date when the draft seniority list was prepared, the judgment delivered by the Hon'ble Supreme Court in the case of N.R. Parmar (supra) was applicable, and, therefore, the seniority list was correctly prepared on the basis of the said judgment. The aforesaid judgment was over-ruled by the Hon'ble Supreme Court in the case of K. Meghachandra Singh (supra).

However, the said over-ruling was prospective in nature, and therefore, the seniority already decided in terms of the Judgment delivered by the Hon'ble Supreme Court in the case of N.R. Parmar (supra) would be protected. Learned counsel for the petitioners has placed reliance on paragraph 40 of the judgment of K. Meghachandra Singh (supra), which is reproduced as under:-

"40. The Judgment in N. R. Parmar (Supra) relating to the Central Government employees cannot in our opinion, automatically apply to the Manipur State Police Officers, governed by the MPS Rules, 1965. We also feel that N.R. Parmar (Supra) had incorrectly distinguished the long-standing seniority determination principles propounded in, inter-alia, J.C. Patnaik (Supra), Suraj Prakash Gupta & Ors. vs. State of J&K & Ors., reported in (1991) 3 SCC 47 and Pawan Pratap Singh & Ors. Vs. Reevan Singh & Ors., reported in (2011) 3 SCC 267. These three judgments and several others with like enunciation on the law for determination of seniority makes it abundantly clear that under Service Jurisprudence, seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre. In our considered opinion, the law on the issue is correctly declared in J.C. Patnaik (Supra) and consequently we disapprove the norms on assessment of inter-se seniority, suggested in N. R. Parmar (Supra). Accordingly, the decision in N.R. Parmar is overruled. However, it is made clear

that this decision will not affect the inter-se seniority already based on N.R. Parmar and the same is protected. This decision will apply prospectively except where seniority is to be fixed under the relevant Rules from the date of vacancy/ the date of advertisement. "

Learned counsel for the petitioners further submitted that the judgment of K. Meghachandra Singh (supra) is not applicable in the present case as it is specifically mentioned in the aforesaid judgment that it will apply prospectively only and it will not affect those cases of determination of seniority, wherein the seniority is to be fixed under the relevant rules from the date of vacancy/ date of advertisement. Counsel further argued that the draft seniority list was prepared by the official respondents on 26.6.2019 in the light of the Judgment delivered by the Hon'ble Supreme Court in the case of N.R. Parmar (supra) and as per the Office Memorandum of DoPT dated 4.3.2014 as the same was in effect at the relevant time. Accordingly, the seniority between the\ petitioners being direct recruitees and the private respondents being IRTs was required to be accorded in the light of these relevant rules and the petitioners were rightly shown above in the seniority list over the private respondents. It is contended on behalf of the petitioners that the impugned draft seniority list is a final seniority list. As the objections invited by the official respondents were decided, hence, it should be treated as final seniority list. It has also been submitted on behalf of the petitioners that even on behalf of private respondents it has been pleaded in this regard in their original application before the tribunal that the draft seniority list is a final seniority list. It is further argued by the counsel for the petitioners that if the directions of the tribunal are implemented, it would disturb the inter-se seniority between the petitioners and the private respondents. Lastly, counsel argued that looking to the above facts the order passed by the tribunal is erroneous and is not sustainable in the eye of law.

Per contra, the learned counsel for the private respondents submitted that the petitioners are recruitees of the year 2017/2018 while the private respondents are recruitees of the year 2011/2012/2013 and as per the IRT order, they were transferred in the Rajasthan Region on 15.7.2016 and accordingly, they joined the Rajasthan Region in the Months of August and October 2016 respectively. Counsel for the private respondents further submitted that as per Clause 5 of the IRT Policy, for Ministerial Staff the criteria for fixation of seniority of Inter Regional Transfer Cases is that the seniority of the transferee will be fixed below all the employees appointed during the year in the recipient Region and as per Clause 5 of the ITR Policy, they were placed in the bottom of the seniority list in the year 2016 when the petitioners were not even borne in the said cadre. Counsel further argued that the Hon'ble Supreme Court has over-ruled the earlier decision of N.R. Parmar (supra) in the case of K. Meghachandra Singh (supra). Now the draft seniority list has put the private respondents below the Officers (petitioners) who joined the service in the year 2017/2018 and this has been done on the basis of the over-ruled judgment delivered by the Hon'ble Supreme Court in the case of N.R. Parmar (supra). It is also contended that the

impugned seniority list is a draft/ tentative/ provisional and it cannot be treated as a final seniority list. It has also been submitted by the counsel that the object of inviting objections/ representations against the draft / provisional seniority list is to decide the objections of the aggrieved party and after decision/ disposal of the objections/ representations, the final seniority list was required to be prepared and issued. But, here in the instant case, no such final seniority list was prepared and issued by the official respondents after disposal of the objections raised by the private respondents. Lastly, the counsel submitted that the controversy involved in this petition is covered by the Division Bench Judgment of Delhi High Court in the case of Yash Rattan & Ors. v. Union of India & Ors., W.P. (C) No.3576/2021, decided on 09.04.2021.

Counsel for the official respondents submitted that the Memorandum issued by the DoPT dated 04.03.2014 deals with the inter-se seniority of direct recruits and promotees and the same was framed in pursuance of the Judgment of Hon'ble Apex Court delivered in the case of N.R. Parmar (supra). Counsel further submitted that the instructions/guidelines issued for determination of seniority under IRT Policy, puts transferees on request below all the employees appointed during the year in the recipient Region. Counsel further submitted that as per the judicial pronouncements and observations of the Hon'ble Supreme Court, seniority cannot be claimed from the date when an incumbent is yet to be borne in the cadre. In support of his contentions, the counsel submitted that when the objections were raised by the private respondents, same were decided by the authorities by observing that the Regional Director was required to take necessary action as per existing instructions.

Counsel further submitted that the tribunal has directed the official respondents to revisit the seniority list and publish it afresh within the stipulated time. Thus, the official respondents are/ were bound to comply with the said directions. Counsel further submitted that in view of the prescribed norms, the official respondents were bound to call for the objections with regard to the draft seniority list. Therefore, when the draft seniority list was published on 26.6.2019, the official respondents invited objections with regard to the same but the private respondents without availing the administrative channel of submitting the objections approached the Court.

It is also submitted by the counsel for the official respondents that this Court has passed an interim order on 01.02.2021 by which operation of the order dated 15.12.2020 passed by the tribunal was stayed. Thereafter, the official respondents issued a seniority list subject to the decision of this writ petition. Counsel further submitted that thereafter the petitioners have been given promotion subject to the decision of these writ petitions. Lastly, counsel for the official respondents submitted that a revised Office Memorandum was issued by the DoPT on 13.8.2021 and issued instructions relating to determination of inter-se seniority between the promotees and direct recruits and the provisions of the same have come into force w.e.f. 19.11.2019 onwards.

We have heard the counsel for the parties and considered the arguments of both the sides.

The issue involved in this petition is "Whether the draft seniority list dated 26.6.2019 can be treated as final seniority list?"

Before proceeding further to decide the issue, the recent position of law about the law of seniority is required to be seen. It has been decided by the Hon'ble Supreme court in the case of *Ganga Vishan Gujrati & Others v. State of Rajasthan & Others*, reported in (2019) 16 SCC 28 that the jurisprudence in the field of service law is that the retrospective seniority cannot be claimed from a date when an employee is not even borne in the service. It is also necessary to bear in mind that the retrospective seniority unless directed by the Court or expressly provided by the applicable rules, should not be allowed. In paragraph 45 of this Judgment the Hon'ble Apex Court held that:-

"45. A consistent line of precedent of this Court follows the principle that retrospective seniority cannot be granted to an employee from a date when the employee was not borne on a cadre. Seniority amongst members of the same grade has to be counted from the date of initial entry into the grade. This principle emerges from the decision of the Constitution Bench of this Court in *Direct Recruit Class II Engineering Officers' Association v State of Maharashtra*, reported in (1990) 2 SCC 715. The principle was reiterated by this Court in *State of Bihar v Akhouri Sachindra Nath*, reported in 1991 Supp (1) SCC 334 and *State of Uttaranchal v Dinesh Kumar Sharma*, reported in (2007) 1 SCC 683. In *Pawan Pratap Singh v Reeven Singh*, reported in (2011) 3 SCC 267, this Court revisited the precedents on the subject and observed:

"45. ... (i) The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

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

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective

basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.”

Subsequently, this view was again followed by the Hon’ble Supreme Court in the case of *The State of Bihar & Ors. v. Arbind Jee*, Civil Appeal No. 3767 of 2010 decided on 28.9.2021, in which the Hon’ble Apex Court held that the action of the authorities in determination of the seniority from the date of entering service was found to be consistent with the applicable laws. Similar view was again taken by the Hon’ble Supreme Court in the case of *Manohar Lal Jat & Others v. State of Rajasthan & Others*, reported in 2020 SCC OnLine 956 that the seniority in the cadre would be fixed from the date of appointments of the employees or officers to the cadre.

The Division Bench of the Delhi High Court in the case of *Yash Rattan & Ors.* (supra) has dealt with the issue-in-question as under:-

“16. We have examined the rival contentions. It is a matter of fact that the seniority position in the present case was not finally settled when the judgment in the case of *K. Meghachandra Singh* (supra) was delivered by the Hon'ble Supreme Court on 13th November, 2019. The impugned seniority list was issued on 15th March, 2018 and immediately thereafter, various representations were filed on behalf of the private respondents against the said seniority list. When no response was received on the said representations, the private respondents filed the OA before the CAT, challenging the said seniority list, from which the present petition arises. In fact, OA was also filed before the judgment in *K. Meghachandra Singh* judgment (supra) was delivered. Therefore, it is incorrect on the part of the petitioners to say that the seniority position was settled and therefore the same has to be protected in terms of the judgment in *K. Meghachandra Singh* judgment (supra). Accordingly, once the seniority list itself was subject matter of challenge before CAT, the law laid down in the case of *K. Meghachandra Singh* (supra) had to be applied. The following paragraphs from the judgment in *K. Meghachandra Singh* (supra) may be referred to:-

"37. When we carefully read the judgment in *N.R.Parmar*, it appears to us that the referred OMs (dated 7-2-1986 and 3-7-1986) were not properly construed in the judgment. Contrary to the eventual finding, the said two OMs had made it clear that seniority of the direct recruits be declared only from the date of appointment and not from the date of initiation of recruitment process. But surprisingly, the judgment while referring to the illustration given in the OM in fact overlooks the effect of the said illustration. According to us, the illustration extracted in *N.R. Parmar* itself, makes it clear that the vacancies which were intended for direct recruitment in a particular year (1986) which were filled in the next year (1987) could be taken into consideration only in the subsequent year's seniority list but not in the seniority list of 1986. In fact, this was indicated in the two OMs dated 7-2-1986 and 3-7-1986 and that is why the Government issued the subsequent OM on 3-3-2008 by way of clarification of the two earlier OMs.

38. At this stage, we must also emphasise that the Court in N.R. Parmar need not have observed that the selected candidate cannot be blamed for administrative delay and the gap between the initiation of process and appointment. Such observation is fallacious inasmuch as none can be identified as being a selected candidate on the date when the process of recruitment had commenced. On that day, a body of persons aspiring to be appointed to the vacancy intended for direct recruits was not in existence. The persons who might respond to an advertisement cannot have any service-related rights, not to talk of right to have their seniority counted from the date of the advertisement. In other words, only on completion of the process, the applicant morphs into a selected candidate and, therefore, unnecessary observation was made in N.R. Parmar to the effect that the selected candidate cannot be blamed for the administrative delay. In the same context, we may usefully refer to the ratio in *Shankarsan Dash v. Union of India*, where it was held that even upon empanelment, an appointee does not acquire any right.

39. The judgment in N.R. Parmar relating to the Central Government employees cannot in our opinion, automatically apply to the Manipur State Police Officers, governed by the MPS Rules, 1965. We also feel that N.R. Parmar had incorrectly distinguished the long-standing seniority determination principles, propounded in, *inter alia*, *Jagdish Ch. Patnaik, Suraj Parkash Gupta v. State of J&K and Pawan Pratap Singh v. Reevan Singh*. These three judgments and several others with like enunciation on the law for determination of seniority makes it abundantly clear that under service jurisprudence, seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre. In our considered opinion, the law on the issue is correctly declared in *Jagdish Ch. Patnaik* and consequently we disapprove the norms on assessment of inter se seniority, suggested in N.R. Parmar. Accordingly, the decision in N.R. Parmar is overruled. However, it is made clear that this decision will not affect the inter se seniority already based on N.R. Parmar and the same is protected. This decision will apply prospectively except where seniority is to be fixed under the relevant rules from the date of vacancy/the date of advertisement."

17. From a reading of the above passages, the dicta of the Hon'ble Supreme Court that emerges, can be summarized, as below:-

(i) OMs dated 07.02.1986 and 03.07.1986 were not properly construed in the N.R. Parmar (*supra*) judgment. The said OMs made it clear that seniority of direct recruits had to be fixed from the date of appointment and not from the date of initiation of recruitment process;

(ii) Persons aspiring to be appointed to a vacant post do not have any vested right. Only upon completion of the selection process, a candidate becomes a selected candidate and therefore, the finding in N.R. Parmar (*supra*) that the selected candidate cannot be blamed for administrative delay, was not correct;

(iii) N.R. Parmar (*supra*) has incorrectly distinguished the longstanding seniority

determination principles propounded in the following cases:-

(a) Jagdish Ch. Patnaik Vs. State of Orissa, (1998) 4 SCC 456;

(b) Suraj Prakash Gupta Vs. State of J&K, (2000) 7 SCC 561; and

(c) Pawan Pratap Singh Vs. Reevan Singh, (2011) 3 SCC 267

(iv) In service jurisprudence, seniority cannot be claimed from the date when the incumbent is yet to be borne in the cadre and therefore, norms on assessment of inter se seniority, suggested in N.R. Parmar (supra) case were disapproved;

(v) Decision in N.R. Parmar (supra) case is overruled, however the decision will not affect the inter se seniority already based on N.R. Parmar (supra) case and the same is protected. Decision will apply prospectively.

18. Therefore, in our view CAT has correctly applied the dicta in K. Meghachandra Singh (supra) case in the present case and has proceeded to quash the seniority list to the extent it placed the petitioners above the private respondents. The fact that the CAT decision would impact the inter se seniority between the promotees and direct recruits (petitioners), is not the subject matter of the present petition, and therefore, need not be examined. It is also an admitted position that in the present case requisitions for the appointment of the petitioners were sent to SSC the recruiting authority on 11th February, 2015, after the private respondents had already joined the Delhi Commissionerate. Therefore, even in terms of OM dated 4th March, 2014, the petitioners cannot be placed above the private respondents."

The whole case of the petitioners is based on clause 5(d) of the Office Memorandum (for short 'the OM') dated 4.3.2014 which says that the recruitment year would be the year of initiating the recruitment process against a vacancy year and this OM is based on the Judgment of Hon'ble Supreme Court delivered in the case of N.R. Parmar (supra).

As per the petitioners, the advertisement was issued by the ESIC Department for the post of LDC on 4.12.2015 by which the vacancies were notified and the written examination was conducted in the Month of March 2016. Pursuant thereto, the petitioners stood selected and were given appointment in Rajasthan Region on 29.12.2017 and 1.1.2018 respectively. While the private respondents were selected and appointed in the year 2011/2012/2013 on the post of LDC in ESI Corporation in Gujarat, Punjab and Maharashtra Regions but under the Inter Regional Transfer Policy they were transferred to the Rajasthan Region in the Month of August / October 2016 and all of them were put in the bottom of the seniority list of the year 2016. Thus, as per the petitioners, according to the OM dated 4.3.2014, they are senior to the private respondents as their recruitment process was initiated on 4.12.2015. When the draft seniority list was issued on 26.6.2019, the petitioners were rightly placed above the private respondents.

It is the case of the petitioners that the objections were invited against this draft

seniority list dated 26.6.2019 till 26.7.2019 and it was specifically mentioned that if no objections/ representations are received till 26.7.2019, this draft seniority list would be treated as final seniority list. Since the private respondents submitted their first representation on 22/07/2019 and the second representation on 22.11.2019 i.e. after the cut off date, hence, the second representation dated 22.11.2019 was out of limitation and the draft seniority list dated 26/06/2019 became final seniority list. Hence, the inter-se seniority of the petitioners, based on N.R. Parmar's case (supra), stood protected as per paragraph 40 of the judgment of the Hon'ble Apex Court in the case of K. Meghachandra Singh (supra).

Such arguments of the petitioners have no force because the judgment of N.R. Parmar (supra) was over-ruled by the Hon'ble Supreme Court on 19.11.2019 in the case of K. Meghachandra Singh (supra) and till the decision of K. Meghachandra Singh (supra), the objections filed by the private respondents against the draft seniority list were pending and the same were not decided even till 11.3.2020 and no final seniority list was issued by the official respondents even till 11.3.2020. Hence, after 19.11.2019, the judgment of N.R. Parmar (supra) and any instructions issued by the official respondents lost its value as the judgment of N.R. Parmar (supra) stood over-ruled. Hence, the petitioners cannot claim any right or benefit on the basis of the draft seniority list dated 26.6.2019.

A draft seniority list can never be treated as final seniority list because placement in seniority list is an important facet of service conditions of an employee. Every employee has right to include his name in the seniority list of the cadre and at appropriate place as per his entitlement. Further, there must be certainty to seniority position and finality. Placement in seniority list determines further elevation in status and opportunity to reach higher echelons of service. As employees progress upwards to higher positions in the pyramidal structure, the scope of elevation narrows down. Change of one placement in the seniority list, up or down, would have cascading effect. As seniority placement is a valuable right, detailed procedure is envisaged to determine seniority positions. It is necessary to draw provisional seniority list determining positions and to call for objections. If objections are filed, they have to be considered and then final seniority list has to be issued. A person need not file his objections if he is satisfied with the position assigned to him in the provisional seniority list. If accepting objection of an employee would result in substantial variation in the principle to determine seniority and placement in the seniority list, it is but necessary to put on notice persons likely to be affected.

The Division Bench of Delhi High Court in Sh. Adil Rashid Siddiqui v. Union of India & Ors., W.P. (C) No.393/2012, decided on 20.1.2012 has held that the very purpose of using a draft seniority list is to be an opportunity to those whose names find place in the list, to make representations, if any, in respect of their placement in the list. It is only after considering the objections received against

the placements shown in the draft seniority list, that a final list can be drawn up and issued by the Department.

Here in this case the department issued only a draft seniority list on 26.6.2019 and invited objections/ representations against this draft seniority list and the objections were submitted by the private respondents on 22.7.2019 i.e. before the last date i.e. 26.7.2019 but the same were not decided by the department and in the meantime the judgment of K. Meghachandra Singh (supra) came on 19.11.2019 by which the judgment of N.R. Parmar (supra) was over-ruled. The private respondents brought this judgment into the notice of the department immediately on 22.11.2019. Thereafter, the private respondents approached the tribunal by way of filing Original Application No.291/777/2019 in which they challenged the draft/tentative seniority list dated 26.6.2019. Since the objections of the private respondents were not decided and the same were pending, hence the tribunal dismissed their Original Application vide order dated 20.12.2019 by observing that they have challenged the tentative seniority list, hence, their original application is premature. Finally, the representations/ objections of the private respondents were decided by the Department on 11.3.2020 and the same were rejected by observing that no revised instructions/ guidelines have been received from the DoPT.

Afterwards, the private respondents challenged this draft seniority list dated 11.3.2020 before the tribunal and prayed for issuing directions to the department for issuing fresh seniority list in the light of observations made by the Hon'ble Supreme Court in the case of K. Meghachandra Singh (supra).

Since both the lists dated 26.6.2019 and 11.3.2020 were draft/tentative/ provisional seniority list and no final list was issued by the department, hence, by no stretch of imagination, it can be believed that the draft seniority list dated 26.6.2019 was the final seniority list. Since the objections/ representations submitted by the private respondents on 22.7.2019 and on 22.11.2019 against this draft/ tentative seniority list were pending which were finally decided on 11.3.2020. Thereafter, no final seniority list was issued till the impugned order dated 15.12.2020 was passed by the tribunal. Hence, the draft seniority list dated 26.6.2019 cannot be treated as a final seniority list. Thus the tribunal has not committed any illegality in issuing directions to the official respondents to revisit the draft seniority list in the light of the current legal position including the directions issued by the Hon'ble Apex Court in the case of K. Meghachandra Singh (supra) and publish a final seniority list.

There is no force in the arguments of the counsel for the petitioners that the private respondents have admitted in their pleadings before the tribunal in their original application that their objections to the draft seniority list have already been rejected while issuing another draft seniority list dated 11.3.2020 and therefore, the said draft seniority list dated 11.3.2020 is final in respect to them. Such pleadings do not amount to admission on the part of the private respondents because the draft seniority list can never be treated as a final

seniority list. In our considered opinion, a final seniority list has to be issued after disposal of the representations/ objections and here in this case admittedly no final seniority list was issued by the department after deciding the representations of the private respondents on 11.3.2020.

In view of the discussions made hereinabove, there is no force in this petition and the same is hereby dismissed.

Stay application and all pending applications, if any, also stand dismissed.

No order as to costs.