

(2025) 04 DEL CK 1093

In the Delhi High Court

Case No : Writ Petition (C) No. 4506 Of 2021 & Civil Miscellaneous Application
No. 15134 Of 2025

Subhash Chandra Tripathi & Ors

APPELLANT

Vs

Directorate General, Indo Tibetan Border Police Force & Ors

RESPONDENT

Date of Decision : 30-04-2025

Acts Referred:

Central Reserve Police Force Act 1949 — Section 18
Central Reserve Police Force Rules, 1955 — Rule 8(b)(ii), 8(e)
Indo Tibetan Border Police Force Rules, 1994 — Rule 187

Citation : (2025) 04 DEL CK 1093

Hon'ble Judges : C. Hari Shankar, J;Ajay Digpaul, J

Bench : Division Bench

Advocate : Maninder Acharya, Shreya Garg., Padma Priya, Rishabh Sancheti, Shikhar Bhardwaj, Pratima N Lakra, Shailendra Kumar Mishra, Chandan Prajapati, Reynil Johans, Govind Yadav, Sagar Saxena, Parmeet Singh, Sarthak Pandey, Krishnendu Halder, M. K. Bhardwaj, Priyanka Bhardwaj, Himanshu Bhardwaj

Final Decision : Allowed

Judgement

C. Hari Shankar, J.

The lis

1. The petitioners assail a seniority list in the grade of Assistant Commandant in the Indo Tibetan Border Police "ITBP", circulated by the Directorate General, BTC, Police vide Memorandum dated 24 April 2020, to the extent the seniority list places the petitioners en bloc below the respondents.

Facts

2. The petitioners are direct recruits to the grade of Assistant Commandant. They participated in a written test, which was held on 20 October 2013, of which result was declared on 9 July 2014. Pursuant to their succeeding in the said selection,

the petitioners joined as Assistant Commandant in the ITBP in June 2015.

3. On 26 July 2017, a Departmental Promotion Committee "DPC", was held for promotion from the grades of Subedar Major and Inspector to the grade of Assistant Commandant. Following this, the respondents were promoted as Assistant Commandants with effect from 21 August 2017, albeit against vacancies of 2013-2014 and 2014-2015.

4. Inter se seniority among direct recruit and promotee officers in the ITBP is determined on the basis of Rule 8(b)(ii)(e) [8. Seniority . – ***** (b) The inter se seniority of Superior Officers shall be determined as under: ***** (ii) The inter se seniority of direct recruits to the Central Reserve Police Force in the rank of Company Commander or Quarter Master or Assistant Principal, Central Training College, shall be determined in accordance with the aggregate marks obtained by them before the selection board and at the passing out examinations conducted after their basic training at the Central Reserve Police Force, Internal Security Academy. An officer promoted locally in the Central Reserve Police Force or from a Subordinate Police Service in the State shall take rank immediately below the entire batch of direct recruits, any officer of which may have been appointed on the same date, the inter se seniority between local promotes from the States shall be determined with reference to their dates of birth. ***** (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.] of the CRPF 'Central Reserve Police Force' Rules 1955, in terms of Rule 187 [187. Transitory provision. – Any rule or order applicable to the Force on commencement of these rules shall unless repugnant to these rules, continue to apply unless and until abrogated or modified by the Central Government or any other competent authority.] of the ITBP Rules 1994. This position is acknowledged even in the impugned order dated 18 November 2020 and is not, therefore, in dispute.

5. On 6 February 2019, the respondent issued a seniority list in the grade of Assistant Commandant, in which, according to the petitioners, their seniority vis-a-vis the respondents-promotee Assistant Commandants "the promotee ACs" was correctly fixed.

6. The petitioners are aggrieved by the fact that a revised seniority list in the grade of Assistant Commandant was issued on 24 April 2020 in which the petitioners were shown en bloc below the promotee ACs. No show cause notice was issued to any of the petitioners prior to such downward fixation of their seniority.

7. The petitioners represented against the aforesaid revised seniority list on 28 April 2020. The representations were dismissed by the respondents vide OM

dated 18 November 2020 issued by the Ministry of Home Affairs "the MHA", paras 2 to 5 of which read thus:

"2. In this regard it is intimated that the MHA vide their OM No. 9/11/55-RPS dated 22nd December 1959 inter-alia provides that the principles of seniority of Direct Recruits and Promotee shall apply to the determination of seniority in Central Civil Services and Civil Posts except such services and post for which separate principles have already been issued or may be issued by the Govt. These guidelines have also been referred in DoP&T OM No.20011/1/2008-Estt(D) dated 11.11.2010.

3. The seniority of Direct Recruit officers and Promote officers in ITBP are determined as per Rule 8 (b) (ii) & (e) of CRPF Rules in terms of Transitory Provision under Rule-187 of ITBP Rule 1994. Thus, separate principles are available for determining seniority amongst the Direct Recruits and Promotee Officers in Force, Hence, the DoP&T OM dated 07.02.1986 & 03.07.1986 are referred in DoP&T OM dated 04.03.2014 are not applicable in ITBP Besides, while issuing offer of Appointment to all applicants for appointment as AC/GD (DF), it is clearly specified that their services will be governed under TBPf Act-1992 and Rules-1994 and their seniority will be decided as per CRPF Rule 8 (b) (ii).

4. Since, there was, no DPC could take place for empanelment promotion to the rank of AC(GD) during the year 2013-14 for 2016-17 due to stay imposed by the Hon'ble High Court of Delhi in merger/de-merger case. However based on the order passed by the Hon'ble Supreme Court of India the ITBP conveyed DPC on 26.07.2017 duly taking into consideration year wise vacancies from 2013-14 to 2016-17 as per provision contained in DoP&T OM dated 10.04.1989. Hence, the seniority lists of GD Cadre as on 01.01.2020 has been issued to all formations of the Force vide this Directorate OM No. 5802-35 dated 24.04.2020 placing the ACs promoted during the year 2017 against the vacancy year 2013-14 to 2016-17 in respective years as they were not promoted during these vacancy year due to the merger/de-merger case.

5. Due to non availability of specific provision either in TBPf/CRPF Act & Rules or in DoP&T instructions for determining the inter-se- seniority in case of officer considered/assessed by the DPC for previous years where DPC could not be held due to any reasons/circumstances. In fact, the officers promoted against previous relevant vacancy year is August 2017, have been assigned seniority below the entire batch of Direct Entry AC(GD) and LDCE AC(GD) who joined ITBP as AC(GD) in that particular vacancy year However, actual promotion in respect of all these officers appointed as AC(GD) on promotion against the vacancy year 2013-14 to 2016-17 has not been changed and their further service prospects will be looked into with reference to their actual date of promotion strictly as per the RRs."

8. Aggrieved thereby, the petitioners have instituted the present writ petition, seeking that the seniority list of Assistant Commandants, circulated by the ITBP

under cover of OM dated 24 April 2020, be quashed and set aside, along with the rejection of the petitioners' representations against the OM dated 18 November 2020. A further prayer for a direction to the respondents to publish a revised seniority list, in which the seniority of the petitioners, vis-à-vis the promotee ACs is confirmed, is sought.

9. In the counter-affidavits filed by way of response to the writ petition, the respondents' stand is that promotions against promotion quota vacancies of Assistant Commandant during the years 2013-2014 to 2016-2017 could not be filled up in time owing to an order dated 8 January 2013 passed by this Court in WP (C) 7545/2011 Saurabh Dubey v UOI and WP (C) 596/2012 Amit Kumar Gupta v UOI. As a result, promotions against vacancies which arose during all these years were effected only in 2017. The assignment of seniority, to promotee-ACs, w.e.f. the relevant vacancy year, it is submitted, was to balance equities and ensure that the officers did not lose out on seniority owing to no fault of theirs. The allegation that retrospective promotion was granted to the promotee-ACs is denied, and it is sought to be submitted that assignment of seniority was strictly in terms of para 6.4.4 of OM dated 10 April 1989 issued by the Department of Personnel & Training "DOPT". The respondents place reliance, for this purpose, on the judgments of the Supreme Court in Asis Kumar Samanta v State of West Bengal (2014) 10 SCC 357 and K. Meghachandra Singh v Nigam Siro (2020) 5 SCC 689.

Rival Submissions

10. We have heard Ms. Maninder Acharya, learned Senior Counsel for the petitioners, Ms. Pratima N. Lakra, learned Central Government Standing Counsel for the UOI and Mr. Sagar Saxena, learned Counsel for the promotee ACs, who have been impleaded as respondents.

11. Ms. Acharya places reliance on Rule 8(e) of the CRPF Rules which, she submits, squarely requires inter se seniority, among direct recruit and promotee ACs, to be fixed as per their date of appointment as AC. The promotee is entitled to seniority over the direct recruit only if both were appointed on the same date. She also relies on para 6.4.4. of the DOPT OM dated 10 April 1989, which reads thus:

"6.4.4 While promotions will be made in the order of the consolidated select list, such promotions will have only prospective effect even in cases where the vacancies related to earlier years."

12. Ms. Acharya also relies on the following paragraphs from DOPT OM dated 13 August 2021, which was issued to implement the law declared in Meghachandra:

"No. 2001/2/2019-Estt. (D)

Government of India

Ministry of Personnel, Public Grievances & Pensions

Department of Personnel & Training

North Block, New Delhi

Dated: 13th August, 2021.

OFFICE MEMORANDUM

Subject: Judgement of the Hon'ble Supreme Court of India in Civil Appeal No. 8833-8835 of 2019 of K. Meghachandra Singh & Ors. v Ningam Siro & Ors — revised instructions relating to seniority of direct recruits and promotees and inter-se seniority thereof— reg.

The undersigned is directed to say that the fundamental principles of determining 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 inter alia provided that, the inter se seniority of direct recruits and promotees shall be determined according to the rotation of vacancies between direct recruits and promotees, which shall be based on the quotas of vacancies, provided in the Recruitment Rules for direct recruitment and promotion respectively.

2. The carry forward of unfilled slots of a vacancy year, to be filled up by direct recruits of later years, was dispensed with through modified instructions contained in DoPT O.M. No. 35014/2/80- Estt.(D) dated 7.2.1986 which provides that rotation of quotas for purpose of determining seniority would take place only to the extent of available direct recruits and the promotees. The unfilled direct recruitment/promotion quota vacancies would be carried forward and added to the corresponding direct recruitment/promotion quota vacancies of the next year (and to subsequent years where necessary) for determining the total number of direct recruitment or promotion vacancies to filled up as per usual practice. For determining inter-se seniority between direct recruits and promotees, it would be done as per rotation of quota to the extent of number of vacancies for direct recruits and promotes, as determined according to the quota for that year and the additional direct recruits/promotees selected against the carried forward vacancies of the previous year, to be placed en-bloc below the last promotee/direct recruit, as the case may be, in the seniority list. 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.

3. Subsequently, vide O.M. No. 20011/I/2006-Estt.(D) dated 3.3.2008. the term 'available' as provided in OMs dated 7.2.1986/3.7.1986 was sought to be clarified, wherein it was clarified 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. This was, however, challenged before the Hon'ble Supreme Court of India in Civil Appeal

No. 7514-7515/2005 in the case of N.R. Parmar v/s Union of India & Others. In its judgement dated 27.11.2012 in the said case, the Hon'ble Apex Court held that 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 particular recruitment year, where the recruitment year shall be the year in which the recruitment process for either of the modes of recruitment (direct recruitment or promotion) for a particular vacancy year is initiated viz, initiation of recruitment process against a vacancy year would mean the date of sending of requisition for filling up of vacancies to the recruiting agency in the case of direct recruits or the date on which a proposal, complete in all respects, is sent to UPSC/Chairman-DPC for convening of DPC to fill up vacancies earmarked for promotion.

4. The law laid down in the N.R. Parmar case relating to determination of inter se seniority between direct recruits and promotees in a grade/post was reviewed by the Hon'ble Supreme Court of India in Civil Appeal No. 8833-8835 of 2019 [arising out of SLP(C) Nos.19565-19567 of 2019] in the matter of K. Meghachandra Singh & Ors. Vs Ningam Siro & Ors. In its Order dated 19.11.2019 in CA No. 8833-35/2019 of K. Meghachandra Singh & Ors. Vs Ningam Siro & Ors, the Hon'ble Supreme Court of India has overruled the decision of the Court in NR Parmar case.

5. In para 40 of the Order dated 19.11.2019, the Hon'ble Court inter-alia held that "the law on the issue is correctly declared in J.C. Patnaik (Supra). 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." Further, in para 38, the Hon'ble Court had held as under:

"38. When we carefully read the judgment in N. R. Parmar (Supra). it appears to us that the referred OMs (dated 07.02.1986 and 03.07.1986) 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 the N. R. Parmar (Supra) 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 07.02.1986 and 03.07.1986 and that is why the Government issued the subsequent OM on 03.03.2008 by way of clarification of the two earlier OMs.

6. The determination of inter se seniority of direct recruits and promotees, as laid down by the Hon'ble Supreme Court of India, in its Order dated 19.11.2019 in K. Meghachandra Singh case, has been carefully examined in consultation with the Department of Legal Affairs, and the following principles have emerged:-

(i) 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 determining vacancies to be filled by the respective quotas in a recruitment year. The term 'recruitment year' shall mean the year in which the vacancy arises. However, inter se seniority between direct recruits and promotees, who are appointed against the vacancies of respective quota, would 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.

(ii) The terms 'recruitment' and appointment' have to be read harmoniously and the determination of seniority for recruitees would depend on their actual appointment and not the initiation of recruitment process itself. It thus follows that the seniority of direct recruits and promotees henceforth stands delinked from the vacancy/year of vacancy.

(iii) The source of legitimacy of determination of seniority would be with reference to the date of joining of a person against a vacancy, irrespective of the fact that it may have arisen in the previous year(s) and not being a carried forward vacancy of any quota.

(iv) If adequate number of direct recruits (or promotees) do not become available, "rotation of quotas" for the purpose of determining seniority, would stop after the available direct recruits and promotees are assigned their slots on joining in a particular year.

(v) The term 'available', both in the case of direct recruits as well as promotees, for the purpose of rotation and fixation of seniority, shall be the actual year of appointment after declaration of results/selection and completion of pre-appointment formalities as prescribed.

(vi) Thus, appointees who join in the concerned recruitment year and those who join in subsequent year(s), would figure in the seniority list of the respective years of their being appointed. To that extent it may not be necessary to go into the question of quota meant for direct recruits and promotees to find out as to the year in which the vacancy arose against which the recruitment is made.

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/I/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 promotes, already decided in terms of O.M. No. 20011/I/2012-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 promotes, 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' appearing in these OMs dated 7.2.1986/3.7.1986, for the purpose of rotation of quota in fixation of inter-se seniority, shall mean the actual number of direct recruits and promotees appointed during the year after declaration of results/selection and completion of pre-appointment formalities as prescribed.

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

8. These provisions shall come into effect from 19.11.2019 onwards.

9. All Ministries/Departments are requested to bring these instructions to the notice of all concerned.

(Pradeep Kumar)

Under Secretary to the Govt of India"

13. In 2013-2014, with effect from when the promotee-ACs have been granted seniority as AC, Ms. Acharya submits that they were not even borne on the cadre of ACs. They cannot, therefore, be granted seniority from a date when they were not borne on the cadre. She relies, for this purpose, on the following paragraphs from the judgement of a coordinate Division Bench of this Court in Jagmohan Vishwakarma v UOI 2023 SCC OnLine Del 4494:

"50. In the case of K. Meghachandra Singh v Ningam Siro, it was held that there may be administrative delay and the gap between initiation of process and appointment, but benefit of the same cannot be given to the candidate who is aspiring to be appointed to a vacancy. On that day, the persons aspiring to be appointed to the vacancy intended for direct recruits were not in existence. The

persons may have responded to the advertisement, but they cannot have service-related rights, not to talk of right to have their seniority counted from the date of the advertisement. It is only on completion of the process; the applicant morphs into a selected candidate and would be entitled to all the rights under the service. This was also the ratio in *Shankarsan Dash v Union of India* (1991) 3 SCC 47, wherein it was held that even upon empanelment, an appointee does not acquire any right.

51. In *Subodh Rokade v Union of India Through Its Secretary* 2021 SCC OnLine Del 2812, the Co-ordinate Bench of this reaffirmed all the aforementioned judgments that under service jurisprudence, seniority cannot be claimed from the date when the incumbent is yet to be borne in the cadre. Similar observations were made by the Co-ordinate Bench of this Court in the case of *Yash Rattan v Union of India* 2021 SCC OnLine Del 1598.

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”.

(Emphasis in original)

14. Responding to Ms. Acharya’s submissions, Ms. Pratima Lakra, learned CGSC, relies on Rule 8(b)(ii) of the CRPF Rules. She reiterates the stand adopted by the respondents in their counter-affidavit, that the promotee-ACs were given seniority from the relevant vacancy years against which they were considered for promotion in 2017, as it had not been possible to hold DPCs from 2013-2014 to 2016-2017 owing to the interim order passed by this Court in *Saurabh Dubey and Amit Kumar Gupta*. She relies on the judgements of the Supreme Court in *Asis Kumar Samanta and U.D. Lama v State of Sikkim* (1997) 1 SCC 111.

15. Mr. Sagar Saxena, arguing for the promotee ACs, adopts the reasoning contained in the impugned Order dated 18 November 2020, whereby the petitioners’ representations were rejected. He cites the judgment of the High Court of Madras in *UOI v Mohd Sikander Ali* 2012 SCC OnLine Mad 5428 (DB) and also relies on para 6.4.1 of the DOPT OM dated 10 April 1989, which reads thus:

“Preparation of year-wise panels by DPC where they have not met for a number of years

6.4. 1. Where for reasons beyond control, the DPC could not be held in an year(s), even though the vacancies arose during that year (or years), the first DPC that meets there should follow the following procedures:

(i) Determine the actual number of regular vacancies that arose in each of the previous year(s) immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately.

(ii) Consider in respect of each of the years those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards.

(iii) Prepare a 'Select List' by placing the select list of the earlier year above the one for the next year and so on;"

16. Rejoining to the submissions of Ms. Lakra and Mr. Saxena, Ms. Acharya submits that the decisions in *Asis Kumar Samanta* and *U.D. Lama* stand distinguished by the Supreme Court in paras 13.1, 13.2 and 15 of *Sunaina Sharma v State of J & K* (2018) 11 SCC 413, on which she relies.

Analysis

17. To our mind, the controversy stands answered by Rule 8(e) of the CRPF Rules, and one need look no further. Rule 8(e) is clear in its command that inter se seniority among direct recruits and promotes to the same rank would be reckoned from their date of appointment. The rule ambits neither of ambiguity nor of equivocation. Though this is in sync with the law laid down in *Meghachandra*, it is not necessary to refer to that decision, as the Rule is clear.

18. The CRPF Rules are statutory in nature, having been promulgated in exercise of the power to frame Rules conferred by Section 18 of the Central Reserve Police Force Act 1949. They, therefore, have to be accorded pre-eminence over any administrative instructions. The hierarchy in this regard stands authoritatively delineated thus, in *Ispat Industries v Commissioner of Customs* (2006) 12 SCC 583:

27. In this connection, it may be mentioned that according to the theory of the eminent positivist jurist Kelsen (the pure theory of law) in every legal system there is a hierarchy of laws, and whenever there is conflict between a norm in a higher layer in this hierarchy and a norm in a lower layer, the norm in the higher layer will prevail (see Kelsen's *The General Theory of Law and State*).

28. In our country this hierarchy is as follows:

- (1) The Constitution of India;
- (2) The statutory law, which may be either parliamentary law or law made by the State Legislature;
- (3) Delegated or subordinate legislation, which may be in the form of rules made under the Act, regulations made under the Act, etc.;
- (4) Administrative orders or executive instructions without any statutory backing.

29. The Customs Act falls in the second layer in this hierarchy whereas the Rules made under the Act fall in the third layer. Hence, if there is any conflict between the provisions of the Act and the provisions of the Rules, the former will prevail. However, every effort should be made to give an interpretation to the Rules to uphold its validity. This can only be possible if the Rules can be interpreted in a

manner so as to be in conformity with the provisions in the Act, which can be done by giving it an interpretation which may be different from the interpretation which the rule could have if it was construed independently of the provisions in the Act. In other words, to uphold the validity of the rule sometimes a strained meaning can be given to it, which may depart from the ordinary meaning, if that is necessary to make the rule in conformity with the provisions of the Act. This is because it is a well-settled principle of interpretation that if there are two interpretations possible of a rule, one of which would uphold its validity while the other which would invalidate it, the former should be preferred.”

19. Thus, where the field is occupied by statutory Rules, executive instructions in the form of OM's issued by the DOPT have no role to play, except where they supplement the Rules by providing for something for which there is no provision in the Rules. DOPT OM's cannot derogate from the position that emerges from the Rules. Equally, a DOPT OM cannot be employed to incorporate into the statutory Rule, an exception not to be found therein.

20. Rule 8(e) of the CRPF Rules admits of no exception in a case in which there might have been a delay in holding of DPCs for promotion, for any reason whatsoever. The respondents cannot, therefore, seek to rely on any executive instruction, or even on any other principle, to justify according seniority to a promotee AC over a direct recruit Assistant Commandant who has joined before him. This would be directly in the teeth of Rule 8(e) and is, therefore, ex facie unsustainable in law.

21. Rule 8(b)(ii) of the CRPF Rules, cited by Ms Lakra, is of no relevance whatsoever, as it deals with inter se seniority among direct recruits, and not with seniority among direct recruits and promotees. Rather, the clause goes on to clarify that a promotee officer would rank immediately below the entire batch of direct recruits appointed to the same post on the same date – though this stipulation would also be of no application as we are not dealing with direct recruits and promotee ACs who were appointed on the same day.

22. Ms. Acharya cited Clause 6.4.4, and Mr. Saxena cited Clause 6.4.1, of DOPT OM dated 10 April 1989. Clause 6.4.1 deals with the procedure to be followed by DPCs when, for any earlier year/years, the DPC could not be convened. We do not see how this Clause enures to the benefit of Mr. Saxena's clients. Ms. Acharya's reliance on Clause 6.4.4 of the OM is, however, more apt, as the clause specifically ordains that promotions would only be prospective in effect, even if they pertain to vacancies of earlier years.

23. At the same time, we do not feel it necessary to advert to the DOPT OM dated 10 April 1989 at all, as the issue in controversy, in our opinion, stands covered by Rule 8(e) of the CRPF Rules.

24. We now advert to the decisions on which Ms Lakra places reliance.

25. Asim Kumar Samanta involved Rule 6(2) of the West Bengal Services

(Determination of Seniority) Rules, 1981 "the West Bengal Rules", under which promotees would be en bloc senior to direct recruits of the same year. There was a delay in promotions on account of an order of stay passed by the Court. In these circumstances, in the seniority list which came to be issued after promotions were made, albeit belatedly, seniority was notionally granted to the promotees over the direct recruits who were recruited in that year. It was in these circumstances that the Supreme Court held that the promotees were rightly not allowed to suffer on account of the delay in their promotions, as Rule 6(2) of the West Bengal Rules entitled them, as of right, to seniority of direct recruits of that year.

26. We do not have, in the present case, any provision, in the CRPF Rules, akin or even similar to Rule 6(2) of the West Bengal Rules. Rather, Rule 8(e) clearly requires seniority between direct recruits and promotees to be fixed as per their date of joining.

27. Asim Kumar Samanta cannot, therefore, aid the respondents.

28. Asim Kumar Samanta approved U.D. Lama.

29. Both Asim Kumar Samanta and U.D. Lama were considered by the Supreme Court in *Sunaina Sharma* which, as is noted in para 1 of the decision, squarely addressed the issue of "whether the private respondents, who are promotee Excise and Taxation Officers could be granted retrospective promotion from the dates when the vacancies occurred in the promotion quota". In para 13.1 and 13.2 of the report, the Supreme Court noted that the decisions in U.D. Lama and Asim Kumar Samanta were rendered in circumstances which were very peculiar. The Supreme Court held thus:

"13.1. The facts in U.D. Lama are very peculiar. The State of Sikkim was formed on 26-4-1975. The Sikkim State Civil Services Rules, 1977 came into force on 1-7-1977 which provided for consultation with the State Public Service Commission. Surprisingly however, there was no Public Service Commission in the State and Chairman to the Public Service Commission was appointed for the first time on 20-11-1981 and he assumed office on 11-1-1982. Prior to the constitution of the Commission, the State Government took a decision to induct officers into the State Public Service on the basis of a written examination and interview. Certain officers were selected and so appointed. The second set of officers were those who had been selected by the Sikkim Public Service Commission. The first set of officers were appointed in 1982 whereas the second set of officers were appointed in 1990 but the officers who were appointed in 1990 were given retrospective appointment from the date of vacancy. This Court held that the appointment of the first batch of officers though upheld by this Court in another case, having been made without consultation with the Commission, these officers appointed in violation of the Rules cannot claim seniority over those who had been appointed strictly in accordance with the Rules and in consultation with the Commission

13.2. In Asis Kumar Samanta also the situation was very unusual. Vacancies in the promotion quota occurred in 1-1-1989 but the promotions could not be made because of interim stay granted by the High Court. The stay order was vacated on 11-12-1990 and the selection process for promotions commenced only thereafter. In these circumstances the Public Service Commission recommended that the promotees be given retrospective seniority with effect from 31-12-1990 because for almost two years the promotion process had been stalled."

30. The Supreme Court went on to clarify thus, in para 13.3 of the report:

"13.3. It would be pertinent to mention that in both these cases normal principle that seniority should be considered from the date of appointment has not been overruled but these judgments have been rendered in the peculiar facts and circumstances of these cases."

Thus, Asim Kumar Samanta and U.D. Lama do not detract, in any manner, from the principle that seniority between direct recruits and promotees should reckon from the date of their joining.

31. Besides, as we have noticed, Rule 8(e) of the CRPF Rules actually settles the issue in the present case.

Conclusion

32. For all the above reasons, we are of the view that the seniority list circulated by the ITBP vide Memorandum dated 24 April 2020, insofar as it places the petitioners en bloc below the promotee ACs, is clearly violative of Rule 8(e) of the CRPF Rules. It is, accordingly, quashed and set aside to that extent. The respondents are directed to redraw the seniority list between the direct recruit Assistant Commandants and promotee Assistant Commandants on the basis of their respective dates of joining.

33. Compliance be ensured within a period of three months from today.

34. The writ petition stands allowed accordingly with no orders as to costs.