

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BENGALURU**

ORIGINAL APPLICATION NO.170/001507/2018

DATED THIS THE 30th DAY OF DECEMBER, 2019

**HON'BLE DR.K.B.SURESH
HON'BLE SHRI C.V. SANKAR**

**...MEMBER(J)
...MEMBER(A)**

Smt. Nithya Jayachandran,
W/o Sri Jayachandran,
Aged about 35 years,
Senior Scientific Officer-II,
O/o ORD AQA, (Overhaul), DG AQA,
Ministry of Defence,
C/o HAL, Vimanapura Post,
Bengaluru –560 017.Applicant

(By Advocate Shri P.A. Kulkarni)

Vs.

1. Union of India

Represented by its Secretary
Department of Defence Production,
Ministry of Defence,
No.136, South Block,
New Delhi – 110 001

2. Director General, AQA

Directorate General of Aeronautical
Quality Assurance (DGAQA)
Ministry of Defence
'H' Block
New Delhi-110 011.

3. Deputy Director General (South Zone)

Directorate General of Aeronautical
Quality Assurance,
Ministry of Defence
Post Box No.1782
Vimanapura
Bengaluru-560 017.

4. Smt Umesh Kuwar,

W/o Sri Divyanshu Gupta,
SSO-I,
O/o Regional Director Aeronautical

Quality Assurance (ORDAQA)
 Ministry of Defence
 C/o BEL, Bharat Nagar PO,
 Ghaziabad (UP): 201010. ...Respondents

(By Standing Counsel Shri K. Gajendra Vasu for R-1-3
 Shri K. Hanifa, Counsel for R-3)

O R D E R (ORAL)

HON'BLE DR.K.B.SURESH ...**MEMBER(J)**

Heard. The matter is in a very small compass. The factual matrix is covered by our earlier order at Annexure A-8 in OA.No.971/2016 dated 19.09.2017, which we quote:

"O R D E R (ORAL)
(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN)

The applicant has filed the present OA seeking the following relief:

- a. *Call for the records leading to the issuance of the impugned Letter F.No.2927/SSO-II/DGAQA/Admn-I dt.13.10.2016 at Annexure-A19 issued by the R-2 on perusal quash the impugned Letter F.No.2927/SSO-II/DGAQA/Admn-I dt.13.10.2016 at Annexure-A19 as arbitrary, discriminatory, unjust, unfair and violation of Article 14 and 16 of Constitution of India.*
- b. *Direct the respondent-2 to rectify the discrepancy in the Seniority Roll for SSO-II at Ann-A13 and direct the R2 to place the applicant at Sl.No.3 by superseding DPC candidates Shri Komal Padmakar Barhate at Sl.No.3-R4 and Sh.V.K.Kadam at Sl.No.9-R6 and Shri Rajeev Verma at Sl.No.4-R5, in consequence thereof direct the R2 to issue the fresh Seniority Roll for SSO-II in the interest of justice and equity.*

2. Based on the details furnished in the OA and the reply statement, the facts of the case are as follows:

The respondent organisation i.e. Directorate General of Aeronautical Quality Assurance(DGAQA) vide its letter dated 29.9.2009 placed a requisition with the UPSC for recruitment of 23 Senior Scientific Officer Grade-II in six different disciplines such as Electrical, Electronics, Computer Engineering, Mechanical, Metallurgy & Chemical. The applicant had applied for the said recruitment in response to the UPSC advertisement dated 31.12.2009 (Annexure-A4) under Electronics category. After completing the selection process, the UPSC sent different panels for the six disciplines which included six names under the Electronics category. The applicant did not figure in the said list. After one Shri

Raghavendra M.S who was number one in the panel under Electronics category did not join the post, the respondents sought names from the reserved list and the name of the applicant was recommended in his place. The applicant was appointed vide communication dated 20.9.2012(Annexure-A7) and after seeking time she joined on 19.11.2012. The Seniority Roll of SSO-II in DGAQA was brought out on 01.04.2014 in which the applicant's name did not figure though she had completed more than a year's service by that time. Thereafter, she submitted representation dated 30.4.2014(Annexure-A9) for inclusion of her name in the seniority list. The respondent No.2 informed her vide communication dated 31.8.2015(Annexure-A12) that her name will be reflected in the seniority list. The fresh Seniority Roll was brought out on 26.11.2015(Annexure-A13) in which the applicant's name was shown at SI.No.21. Thereafter, the applicant submitted a representation on 7.12.2015(Annexure-A14) saying that her name should have been placed at SI.No.3 below Shri Baburam Yadav as she belongs to same panel as him. She had also referred to information obtained from UPSC by her through RTI which stated that she had obtained 66 marks as compared to 60 marks secured by Shri Rajeev Verma. Hence, she claims placement of her name above him. She also agitated against the placement of promoted candidates at SI.No.4 and 9 above her. The issues that have been highlighted in the OA are the inter-se seniority between the applicant and other persons who were directly recruited in the same year as well as the inter-se seniority position of direct recruits and promotees in the seniority roll.

3. The applicant has highlighted the following aspects in the OA;

The DOPT OM dated 11.11.2010 clearly indicates that the inter-se seniority of candidates nominated from reserve panel will be fixed as per consolidated merit given by UPSC/SSC/Recruiting agency. The DOPT OM dated 13.6.2000 had clearly specified that a request for nomination from reserve list, if any, is made to the UPSC in the event of an occurrence of a vacancy caused by non-joining of the candidates within a period of one year, then such a vacancy should not be treated as fresh vacancy. The applicant sought information from UPSC under RTI as to whether the recruitments undertaken against the 6 advertisements are to be considered as a single selection panel, how the inter-se seniority of all the selected candidates would be determined and whether the UPSC considered all the candidates selected against six advertisements. The UPSC informed the applicant that each of the recruitment cases mentioned in RTI is different and a separate merit list is prepared for each recruitment case and hence no question of preparing a consolidated merit list and deciding inter-se seniority of all candidates selected against the six advertisements. The DOPT OM dated 3.7.1986(Annexure-A2 series) stipulated that the relative seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment on recommendations of the UPSC or other selecting authorities, the person appointed as a result of earlier selection being senior to those appointed as a result of subsequent selection. The applicant contends that she had secured 66 marks as against 60 marks secured by Shri Rajeev Verma and hence she should be considered senior to Shri Rajeev Verma and should be placed above him in the seniority list. She further mentioned that the advertisement against which she was recruited has closing date of 31.12.2009 and another officer Shri Sudhakar Sahoo was recruited against UPSC advertisement with closing date of 28.1.2010, but he has been placed at SI.No.20 which is above the applicant in the seniority list. Referring to the inter-se seniority between direct recruits and the promotes, the applicant had referred to the judgment of the Hon'ble Apex Court in UOI vs. N.R.Parmar's case which held that the recruitment year should be the year of initiating the recruitment

process against a vacancy year. Advertisement against which the applicant was recruited was published in month of December 2009 and hence the recruitment year of the applicant is 2009-10. Two promotee candidates at Sl.No.3 and 9 in the seniority list(Annexure-A13) were considered under the DPC held on 25.10.2010. Hence they should belong to the recruitment year 2010-11 and placed after the applicant in the seniority list. The applicant submits that the stand taken by the respondents in the impugned order dated 13.10.2016(Annexure-A19) that candidates appointed from the reserve panels may be placed at the bottom of seniority list prepared on the basis of consolidated order of merit of a particular selection year is against its own OM dtd.3.7.1986 and therefore, the same is unjustified and liable to be set aside and her seniority should be fixed at Sl.No.3 as contended by her.

4. The respondents in their reply statement submitted that the Defence Aeronautical Quality Assurance Service(DAQAS) Rules 2005(Annexure-R3) provide induction at the level of Senior Scientific Officer(SSO-II) by direct recruitment(75%) and by promotion(25%). Accordingly, inter-se seniority of direct recruits and promotes in the grade of SSO-II is determined as per the ratio prescribed in the Service Rules i.e. 3:1. The term 'availability' contained in DOPT OM dated 7.2.1986(Annexure-R4) continued to be taken as date of appointment of batch of direct recruits and promotes even before the issue of DOPT OM dated 3.3.2008. Hence withdrawal of said OM dated 3.3.2008 issued pursuant to the judgment in N.R.Parmar's case does not affect the seniority position of officers fixed as per the said interpretation of the term 'availability'. The inter-se seniority of direct recruits and promotes decided prior to 27.11.2012 i.e. effective date of revised instructions is considered as settled cases and are not to be re-opened. Since more than one panel was received from UPSC during a year in the grade of SSO-II, the same was consolidated as a single batch and availability of complete batch was deemed from the date of joining of first candidate from the consolidated batch. The applicant and another direct recruit SSO-II Smt.Ranjitha C who was selected from the reserve panels were available on the date of issue of last seniority roll of SSO-II on 01. Apr 2014 but they were not included inadvertently. Their names were included in the draft seniority roll dated 26.11.2015 at the bottom of batch of direct recruits of the year 2010-11 and above the available promotes of DPC year 2011-12 i.e above Shri M.S.Rana to Smt.Kusum Dahiya.

5. Referring to the contention made by the applicant in her representation, the respondents submitted that in pursuance of DOPT OM dated 13.6.2000, the selection of a candidate from reserve panel should not be treated as fresh vacancy. Though the applicant became available in the year 2012-13 and the date of her joining is 19.11.2012, she has been deemed available in the year 2010-11 along with other candidates of her panel and was placed at the bottom of the consolidated batch of year 2010-11. Subsequent to the issue of panel of Electronics discipline to which the applicant belongs, the panels of other disciplines were available such as Metallurgy dt.13.8.2010, Chemical dt.8.6.2011, Electrical dt.23.11.2010, Mechanical dt.04.01.2011, 25.2.2011 & 18.3.2011 and Computer Engineering dt.27.1.2011. In case the applicant is placed with her panel of Electronics discipline above Sri Rajeev Verma on the basis of marks obtained by her, she would also be above the four other candidates of other discipline namely Bhaskar Satya Pulyapudi, Metallurgy, Abhishek Sahay, Mechanical, Anand Palathadethil, Comp.Engineering and Srinivasa Phani Kumar, Computer Engineering who have got more marks than her and joined well before her. Regarding the case of promotees referred to by the applicant, the respondents submitted that the DPCs for promotion in SSO-II grade for the year 2009-10(3 vacancies) and 2010-11(01 vacancy) was

conducted by UPSC on 29.9.2010. All 4 departmental promotes, including Shri Komal Padmakar Barhate and Shri V.K.Kadam who were empanelled against vacancy of year 2009-10 were deemed available in the year 2010-11 as first candidate from the consolidated panel joined on 11.11.2010. Accordingly, the departmental promotes have been rotated with available direct recruits of consolidated batch of year 2010-11 in the ratio of 1:3. The DOPT was also consulted on the representation of the applicant for which the DOPT clarified that as regards appointment of candidates from the reserve panel, he/she may be placed at the bottom of seniority list prepared on the basis of consolidated order of merit. Therefore, the respondents contended that there is no merit in the contention made by the applicant.

6. The applicant has filed a rejoinder in which she contends that the submission of the respondents that they have submitted a single requisition for the recruitment of 23 posts of SSO-II is not correct. While it was a single covering letter dated 29.9.2009(Annexure-R9), there are six different requisitions made to the UPSC for recruitment in six disciplines. Moreover the Ministry of Defence OM dated 18.6.2009(Annexure-A22) would indicate that the 23 vacancies were actually pertaining to the year 2008-09 though the respondents attempted to fill up these vacancies only during the year 2009-10 i.e after one year. Hence the interpretation of the term 'available' as defined in the DoP&T OM dated 7.2.86(Annexure-R4) and the interpretation of the respondents in the reply statement regarding availability of complete batch was deemed from the date of joining of first candidate from the consolidated batch is against the order of Hon'ble Apex Court in N.R.Parmar's case. Moreover, the contention made that the inter-se seniority of direct recruits and promotes decided prior to 27.11.2012 i.e. effective date of revised instructions was considered as settled will also not hold good in the present case as the applicant's name has not been entered in the seniority roll. Therefore, without finalising the said roll it cannot be termed as settled. Moreover the DOPT OM dated 4.3.2014 issued in pursuance of the judgment in N.R.Parmar's case indicate that DR/DPC candidates belonging to same vacancy year should be rotated as per the ratio defined in service rules(Annexure-R3). Hence, the direct recruits like the applicant should be rotated with the DPC candidates promoted against the vacancies year of 2008-09 and not with the vacancies year of 2009-10 and 2010-11. Moreover, Sri Baburam Yadav is the first DR candidate and the first DPC candidate Sri Komal Padmakar was placed directly below Sri Baburam Yadav, which is against the ratio of 3:1. Further, Sri Nagendra Singh Poniya is shown as direct recruit, which is not correct as he was not recruited against one of the 23 vacancies in question.

7. The applicant further submitted that all the direct recruits selected through same selection process are always placed together and their date of joining or date of recommendation by the UPSC has no bearing on their seniority and only marks are used to determine the inter-se seniority within the panel. The applicant has referred to inter-se seniority in the Mechanical and Computer Science groups to support her contention.

8. The applicant mentioned that the discipline of the applicant has a closing date of 31.12.2009 and by which time the applicant should need to have 5 years of experience whereas in other cases selected through other advertisements, per se for computers, the closing date was 28.1.2010, they should need to have 5 years of experience as on that date. This should indicate that for other disciplines, the candidates enjoy the criteria of 'first candidate'. Therefore, placing them above the applicant will be arbitrary and against the natural justice. The applicant contended that the advice of the DOPT regarding

appointment of candidates from the reserve panel and their placement at the bottom of seniority list prepared on the basis of consolidated order of merit is therefore grossly unfair and cannot be sustained.

9. The respondents have filed an additional reply statement in which they submit that as the posts of SSO-II are not divided into different disciplines, consolidated vacancies in the grade are released and thereafter these are divided into different disciplines on the basis of requirement of the service. Hence after completion of recruitment process for all disciplines, the same are consolidated as a single batch by placing one panel below another in the chronological order of receipt of panels from the UPSC. Vacancies for 23 candidates in six disciplines were notified in the same day by single letter. As regards the interpretation of the term 'available' as per DoP&T OM dated 7.2.1986 is being followed by the respondent all along. Regarding inter-se seniority of direct recruits which had become available in the year 2010-11, they were consolidated into a single batch in the seniority roll issued on 25.10.2012. Therefore, the inter-se seniority of direct recruits of the year 2010-11 as well as promotes already rotated with them was a settled issue before the issue of revised instructions dated 4.3.2014. The applicant was nominated from the reserve panel and joined the service on 19.11.2012 and hence as per the advice of DoP&T the applicant has been placed at bottom of consolidated batch of direct recruits of the year 2010-11.

10. Regarding first DPC candidate vis-à-vis direct recruit candidate, the respondents submitted that in the previous years the rotation between direct recruits and promotes had ended at direct recruit i.e. Shri Deepak Kumar Sahu. Thereafter, in the year 2010-11, the first available direct recruit i.e. Shri Nagendra Singh Poniya was placed followed by Sri Baburam Yadav and hence the next slot, after three direct recruits as assigned to the promotee. The inclusion of name of Sri Nagendra Singh Poniya in the consolidated batch of the year 2010-11 is as per the interpretation of the term 'availability'. The respondents submit that as no consolidated order of merit has been given by the UPSC, the different disciplines are consolidated as a single batch by placing one panel below another in the chronological order of receipt of panels from the UPSC which is in consonance with the DoP&T instructions that persons appointed as a result of an earlier selection being senior to those appointed as a result of subsequent selection. Therefore, they submit that the entire seniority list has been prepared in accordance with the extant rules and there is no merit in the submission made by the applicant.

11. The applicant has filed additional rejoinder which is practically a reiteration of the submission made earlier in the OA and also the rejoinder.

12. We have heard the Learned Counsel for both sides. The Learned Counsel for the applicant while reiterating the submission made in the OA and rejoinder highlighted the fact that the DOPT OM of July 1986 clearly stipulate that relative seniority of all direct recruits has to be in the order of merit in which they were selected. Subsequent DOPT OM of June 2000 states that a vacancy caused by non-joining of a candidate within the stipulated time should not be treated as fresh vacancy. Therefore the applicant's inter-se seniority amongst direct recruit candidates should have been based on the marks secured by her. The stand taken by the respondents that a candidate from reserved panel would be placed at the bottom of the seniority list is thus against the DOPT OM of July 1986. He also referred to a judgment of the Principal Bench of the Tribunal in OA.No.465/2013 and submitted that the applicant therein was placed in the supplementary list prepared by the UPSC in January 2005 while the original list

of successful candidates was sent in 2004. The DOPT in their reply statement in the said OA submitted that the decision has been taken for fixation of seniority in order of marks obtained by the candidates. Accordingly, the Principal Bench in its order dated 6.9.2013 directed the respondents to fix the seniority of the applicant as per the marks secured by him in the examination. On the same analogy, the inter-se seniority amongst the applicant and other direct recruits of same batch should have been fixed according to the marks secured by her in the selection process. Regarding the inter-se seniority between direct recruits and promotees, the Learned Counsel for the applicant mentioned that the vacancies against the applicant's batch were recruited belong to 2008-09 whereas the promotees belong to vacancy of 2009-10 and 2010-11. Therefore, in terms of the judgment of the Hon'ble Apex Court in N.R.Parmar & others, the direct recruits shall belong to 2008-09 whereas promotes to the year 2009-10 and 2010-11. Therefore, placing promotes along with direct recruits of previous year is not justified.

13. The Learned Counsel for the respondents referred to the details submitted in the reply statement and additional reply statement and submitted that the applicant was appointed from the reserved panel and in terms of the opinion given by the DOPT, she has been placed at the bottom of the consolidated seniority list prepared on the basis of merit. The consolidated seniority list was prepared based on the date of receipt of panels for the six disciplines as no consolidated order of merit of the candidate was provided by the UPSC. Hence all the six panels were consolidated by the respondents into a single batch in the chronological order of the panels issued by the UPSC. They referred to the DOPT OM dated 3.7.1986 which indicated that a person appointed as a result of an earlier selection shall be senior to those appointed as a result of a subsequent selection. Further this aspect has not been questioned by the applicant. The direct recruits have been rotated with promotes who became available in the same year.

14. On a query made to the respondents as to whether the Senior Scientific Officer Grade-II are covered by the Flexible Complementing Scheme meant for Scientists, they mentioned that they are not covered under the Flexible Complementing Scheme. As per the DGAQA service rules, the promotion to the post of Senior Scientific Officer Gr.I is made on the basis of selection by the DPC from the feeder grade i.e. Sr.Scientific Officer Grade-II. Accordingly, promotion to the post of SSC Gr-I is made on the basis of selection i.e. assessment in order of seniority against prescribed benchmark of 'good' in the relevant APARs. However, it could not be clarified by them as to whether the posts in Sr.Scientific Officer Gr-I are meant discipline wise and whether in that case it will be open to only Sr.Scientific Officer Gr-II belong to that discipline alone. On a further query made to the respondents as to how the selection panel for Metallurgy which was received on 13.8.2010 and panel for Chemical received on 5.10.2010 were placed below the Electronics stream whose first list was available only on 6.10.2010 since they were preparing the seniority on the basis of issue of panel by the UPSC, they mentioned that this has been done erroneously. However, when the draft seniority list was placed, no representation was received from any of the direct recruits. However, the same can be corrected separately after examining all the issues. On being asked to the actual vacancy of promotes, they mentioned that the promotes who have been rotated with the direct recruits from the consolidated batch of 2010-11, three vacancies pertain to the vacancy of 2009-10 and one to the vacancy year 2010-11. Since the first candidate from the consolidated batch joined in 2010-11, the promotees were against the vacancies available in the year 2010-11, they have been rotated with the direct recruits. When asked as to whether it

does not go against the spirit of the N.R.Parmar's judgment, the Ld.Counsel or Dept. representative could not clarify the same. The respondents also submitted a written reply which also enclosed a copy of the note from DOPT regarding the inter-se seniority of the applicant.

15.We have gone through the records and have carefully considered the facts of the case and also the submissions made by either side. It is evident from the records that there were 23 vacancies of Senior Scientific Assistant Gr-II which were apportioned between the six different disciplines namely Mechanical, Electrical, Electronics, Metallurgy, Information Technology and Chemical by the respondents based on their requirement. A single communication was sent by the respondents to UPSC on 29.9.2009 for recruitment to Sr.Scientific Officer Gr-II enclosing requisitions for the six disciplines. In terms of OM dated 18.6.2009(Annexure-A22) the said 23 vacancies released for direct recruitment pertain to the year 2008-09. The selected panels for the six disciplines were received by the respondent department from the UPSC on different dates starting with 13.8.2010. In the Electronics panel one of the selected candidate did not join and the respondents requested UPSC to nominate another candidate from the reserved panel. The name of the applicant was communicated in 2012 following which the applicant was appointed vide order dated 20.9.2012. In regard to the seniority of the applicant in the panel, she was placed at the bottom of the consolidated seniority list prepared for that particular selection year based on the consultation and advice of the DOPT. It also appears that in the case of promotes for four vacancies, three departmental promotees were considered against vacancies for the year 2009-10 and one for the vacancy 2010-11 on the basis of DPC conducted by the UPSC on 29.9.2010. They were rotated with the direct recruits taking their availability in the year 2010-11 in the ratio of 1:3. The issues for consideration in the present OA are as follows:

- i.Whether the decision for placing the applicant at the bottom of the consolidated list of direct recruits as communicated vide Annexure-A19 is justified.
- ii.Whether the seniority of the applicant shall be considered based on the marks secured by her during the selection process.
- iii.Whether the inter-se seniority between direct recruits and promotees have been correctly made.

16.As far as the first issue which relates to placement of the applicant at the bottom of the consolidated seniority list of direct recruits is concerned, the applicant had referred to the OM dated 3.7.1986 which says that the relative seniority of direct recruits is to be determined by the order of merit in which they are selected for appointment. It is further clarified in OM dtd.13.6.2000 that if a vacancy is caused by non-joining of the candidate and is filled up by the reserved panel candidate, the same shall not be treated as fresh vacancy. Since the applicant has secured 66 marks in the selection process, she claims for placement of her name above Sri Rajeev Verma who secured 60 marks in the selection process in the seniority roll. The respondents, on the other hand, have taken a stand that as the applicant was appointed from the reserved panel, she has to be placed at the bottom of the panel prepared on the consolidated merit list. The respondents had provided a UO note of the DOPT based on which they placed the applicant at the bottom of the consolidated list and sent a communication dated 13.10.2016(Annexure-A19). The UO note of the DOPT mentions that instructions contained in DOPT OM dated 3.7.1986 stipulate that the relative seniority of all direct recruits is to be determined by an order of merit in which they are selected for appointment on the recommendation of the UPSC or other selecting authority. They also taken a

view that in case of more than one panel are received from UPSC during a year including panels for different disciplines, the same were consolidated as single batch and availability of complete batch is deemed from the date of joining of first candidate from the consolidated batch. Seniority of a candidate from different disciplines shall be considered as per their order of merit. Reference has also been made to OM dated 13.6.2000 on the subject of operation of reserve panels which provided that a vacancy caused by nonjoining of a candidate within the stipulated time shall not be treated as fresh vacancy. The respondents have mentioned in their reply that even though the applicant has actually available in the year 2012-13, her date of joining being Dec.2012, she was placed with other candidates who were available in the year 2010-11. If the appointment of the applicant from a reserved panel is not considered as a fresh vacancy, her seniority should be considered along with all the persons consolidated in the same batch and in the order of merit. There is no stipulation anywhere in the DOPT OMs that a person in the reserved panel has to be placed at the bottom of the consolidated seniority list. Therefore the conclusion drawn by the DOPT in their UO note that applicant belongs to a reserve panel and hence placed below the consolidate list of direct recruits of that batch defies logic and also not in consistent with the OMs referred to by them in the UO note.

17. In this context, reference was made to the order of the Principal Bench of the Tribunal in OA.No.465/2013, Neeraj Kumar Sharma vs. UPSC. The Principal Bench in its order dated 6.9.2013 held vide para-5&6 as follows:

5. When the matter was heard earlier, learned counsel for the respondents sought time to seek instruction in the matter and file reply. Shri R.N.Singh, counsel appearing for DOP&T, respondent No.2, informs that the grievance of the applicant has already been redressed as the cadre controlling authority of the applicant is instructed for fixation of seniority in order of marks obtained by the candidates. He submits that in this regard, as per advice of the Commission, necessary directions to all the cadre controlling authorities have been issued for fixation of seniority in order of marks obtained by the candidates, vide letter dated 08.06.2013. He, therefore, submits that since the only grievance of the applicant is with regard to fixation of his inter-se seniority on the basis of the marks obtained by the candidates, as provided by the DOP&T through OM NO.41019/18/97-Estt(B) dated 13.6.2000, and the cadre controlling authorities have now been instructed to fix seniority as per marks obtained by the candidates, nothing survives to be decided by this Court. The applicant also fairly submitted that the respondents may, therefore, be directed to prepare the seniority list keeping in view the marks obtained within a reasonable period of time.

6. In view of the submissions made and also as agreed to by the parties, we dispose of this matter at this stage with the direction to the respondents to fix the seniority of the applicant as per the marks secured by him in the Examination, meaning thereby that he should be placed above the candidates who have secured less than 1195 marks. However, it would be open to the applicant to approach the Tribunal again in the event the respondents fail to prepare the seniority list keeping in view the marks obtained by the applicant.

In the said OA, the applicant had appeared for the Civil Services Examination 2003. The first list of 413 candidates was published in 2004. In view of the available vacancies, a supplementary list of 44 candidates was published in January, 2005 in which the applicant figured. The applicant was placed below in the first consolidated merit list. As admitted by the DOPT in the said OA, the fixation of seniority was to be based on the order of marks obtained by the candidates irrespective of whether they are in the first list or in the

supplementary list. On the same analogy, in the present case also the seniority of the applicant along with other candidates should be based on the marks secured by her rather than placing her at the bottom of the consolidated list. Therefore, the stand taken by the respondents that a candidate from a reserved panel should be placed at the bottom of the seniority list prepared on the consolidated order of merit clearly appears to us wrong and unjustified.

18. The second issue concerns the placement of the applicant vis-à-vis other candidates of that batch in the consolidated list. We note that the Senior Scientific Officer Gr-II is treated as consolidated cadre. All the 23 vacancies released for direct recruitment for the year 2008-09 by the Dept. of the Defence Production is a consolidated. As submitted by the respondents in their reply, the breakup of vacancies in to six disciplines was done in terms of the requirement of the service. However, after the selection all are consolidated in to a single batch. All the 23 vacancies were reported to the UPSC through a single communication on 29.9.2009 though there were six requisitions for six disciplines. The issuance of notices by the UPSC for the six different disciplines is only a matter of procedure and as processed by the office. Similarly the receipt of selection panels is also based on processing of the files by the office and communicated to the department. The communication of six disciplines cannot be considered as earlier or later selection under any circumstances as all vacancies are consolidated and the selection panels were also consolidated into a single batch. We are unable to accept the contention of the respondents that based on the communication of panels made by the UPSC on different dates, the selection of a discipline is considered as earlier selection than the others whose panel was received later. Though the department claims to have constituted the panels into single batch on the basis of the chronological order of issue of the panels by the UPSC, we note that the panel of Metallurgy received on 13.8.2010 and panel for Chemical received on 5.10.2010 were placed below the Electronics discipline whose panels were received on 6.10.2010 and 6.12.2010. The Department representative during the hearing mentioned that they have wrongly placed the Electronics stream above the Metallurgy but no one objected to the inter-se seniority when the draft seniority list prepared. A wrong cannot be justified by saying that others did not object to it.

19. As the matter stands all selected candidates belong to the same vacancy year and the same batch and form part of the same gradation list. The UPSC in an RTI communication to the applicant informed that since they have prepared a separate merit list for each discipline, there is no question of their preparing a consolidated merit list and deciding inter-se seniority of all the candidates selected against all the six advertisements. The DOPT in their note had indicated that administrative Ministry may obtain a consolidated order of merit of candidates recommended for different disciplines for appointment as Senior Scientific Officer Gr-II from UPSC for a particular year. Though the UPSC did not prepare a consolidated merit list, they did indicate the marks secured by each candidate in the selection process. Therefore, on that basis, the department could have prepared a consolidated merit list of all the candidates based on marks secured by them. In the reply statement, the respondents had tried to justify the placement of the applicant at the bottom of the list saying that 4 persons belonging to the disciplines of Metallurgy, Mechanical, Computer Engineering scored higher marks than the applicant but still placed below to the applicant. If such a stand is taken then marks secured by a candidate should be deciding factor for preparing seniority list based on merit and no other criteria. Since the marks of each candidate are available that should be the basis for preparing the consolidated seniority list. It would be grossly unfair for a

candidate who secured 75 marks to be placed below in the seniority list of a person secured 40 marks only because the selection panel from UPSC for that discipline was received on a later date. The processing of case by the UPSC office whether for bring out the advertisement or sending the panel cannot be a determining factor for deciding seniority of a candidate when the date of joining is not taken into consideration for deciding the interse seniority. Hence it would be logical if the consolidated seniority list prepared on the basis of marks secured by all the candidates of the particular batch.

20. The third issue pertains to the inter-se seniority between promotees and direct recruits. As already mentioned, the vacancies for which direct recruits have been obtained belong to the vacancy year 2008-09, though the selection process took place in 2009-10 and joining of persons took place in 2010-11. On the other hand, four promotes were selected by the UPSC in the DPC held on 29.9.2010 for three vacancies of the year 2009-10 and one for 2010-11. The order of the Hon'ble Apex Court in Civil Appeal No. No.7514-7515/2005 and other connected cases, N.R.Parmar and others Vs. Union of India & ors. dealt with the issue of inter-se seniority between direct recruits and promotes. The Hon'ble Apex Court has elaborately analysed the implication of OMs dated 7.2.1986 and 3.7.1986 and had observed as follows:

"It is not necessary, that the direct recruits for vacancies of a particular recruitment year, should join within the recruitment year(during which the vacancies had arisen) itself. As such, the date of joining would not be a relevant factor for determining seniority of direct recruits. It would suffice if action has been initiated for direct recruit vacancies, within the recruitment year in which the vacancies had become available. This is so, because delay in administrative action, it was felt, could not deprive an individual of his due seniority. As such, initiation of action for recruitment within the recruitment year would be sufficient to assign seniority to the concerned appointees in terms of the 'rotation of quotas' principle, so as to arrange them with other appointees (from the alternative source), for vacancies of the same recruitment year."

The issue of inter-se seniority between direct recruits and promotees has to be decided in terms of the order passed by the Hon'ble Apex Court and subsequent communications by the DOPT. There is no scope for any other interpretation in the matter. The stand taken by the applicant that first direct recruit has joined in 2010-11 and hence they have been rotated with promotes of that batch is wrong and against the order of the Apex Court in N.R.Parmar's case. The inter-se seniority between direct recruits and promotes has to be made strictly in accordance with the judgment of the Hon'ble Apex Court in N.R.Parmar's case.

21. In the light of the discussions in the preceding paras, we hold that the placement of the applicant at the bottom of the consolidated seniority list is not in consistence with the DOPT OM dated 3.7.1986 and therefore, the communication dtd.13.10.2016 at Annexure-A19 is set aside. The applicant shall be placed in terms of marks secured by her vis-à-vis other selected candidates of that particular year. Further in regard to the inter-se seniority between all the candidates selected in the six disciplines in the consolidated merit list the same should be prepared by the respondents based strictly on the marks secured by them as communicated by the UPSC. The inter-se seniority between promotees and direct recruits shall be re-examined treating the vacancy year for direct recruits as 2008-09. The respondents are therefore, directed to prepare the seniority list afresh in accordance with the observation and directions given above. The draft seniority list shall be prepared within a

period of four(4) months from the date of receipt of a copy of this order and then finalised after giving an opportunity for representation, if any, to the draft seniority list.

22.The OA is accordingly, disposed of with the aforesaid direction. No order as to costs.”

2. Thereafter some doubt arose. The methodology of implementation of it and the co-ordinate Bench at Cuttack in OA.No.970/2014 had passed the dated 21.10.2019, which is slightly divergent from it, which we quote:

“O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicants have filed this OA seeking the following reliefs :

- (i) To allow the original application.
- (ii) To quash the seniority list dtd. 23.9.2014 (Annex. A/5) holding that the same is not in consonance with the rules;
- (iii) To quash the memorandum dtd. 4.7.2014 (Annex.A/7) and memorandum dtd 7.11.2014 (Annex.A/8) and memorandum dtd. 29.1.2016 (Annex.A/11) holding that the same are opposing & against the spirit of the DOP&T circulars dtd. 3.7.1986, 13.6.2000 & 4.3.2014;
- (iv) To declare that the Respondents No. 5 to 24 and the persons not yet joined as direct recruits in the SFO(Tech) cadre are junior to the applicants and be placed below in the seniority list;
- (v) To direct the Respondent No.2 to re-fix the seniority of the applicants in appropriate place;
- (vi) To give the consequential benefit on the basis of re-fixation of seniority;
- (vii) To pass any further order/orders as deemed fit and proper in the facts and circumstances of the case.”

2. In brief, the facts in this OA are that the applicants are working as Senior Field Officer (Tech.) (in short SFO) under the respondents after their selection for promotion to the post of SFO through a written examination held on 7.1.2007. They joined in the said post on different dates. Out of 20 persons who were listed to have qualified in the said written examination for promoting it is stated that 6 persons joined in 2009, 6 persons joined in 2010, 4 persons in 2011, 3 persons in 2012 and one person joined in 2013. In the year 2011-12, a panel of outsiders were prepared for direct recruitment to the post of SFO, based on the waiting list of the UPSC in Indian Engineering Service examination conducted in 2010. Seven(7) from this panel joined in 2013 and 5 in 2014. When the draft seniority list was prepared by the respondents on 27.6.2014 (Annexure A/2), consisting of the promotees (like the applicants) and directly recruited employees,

the applicants' names were found to be below the direct recruits who are incorporated and respondent nos. 5 to 22 in this OA, who are stated in the OA to be the applicant's juniors. It is stated that under the Recruitment Rules, 70% of the posts of SFO are to be filled up by way of promotion failing which by deputation and 30% of posts by way of direct recruitment w.e.f. 2011. Prior to 2011 ratio between the promotion and direct recruitment was 75:25.

3. Being aggrieved by the seniority position shown in the list dated 27.6.2014(Annexure-A/2), the applicants submitted representations through proper channel. One representation dated 30.7.2014 submitted by applicant No.1 is at Annexure A/3, stated that the said draft seniority list was not in accordance with the DOPT circular dated 3.7.1986 (Annexure A/4). However, it is stated in the OA that without considering the applicants' representations, the draft seniority list was finalised vide memo dated 23.9.2014 (Annexure A/5). Thereafter, the applicants submitted further representations dated 9.10.2014 to respondent No.2, to which a reply was sent to the applicants stating that the said seniority list was prepared in accordance with the circular dated 4.3.2014 of the DOPT (Annexure A/9), which was issued in pursuance to the judgment of Hon'ble Apex Court in the case of N.R.Parmar Vs. Union of India in Civil Appeal No.7514-7515/2005..

4. The applicant being aggrieved by the reply of the respondents as per the letters at Annexure A/7 and A/8, have filed this OA. Subsequently ,the respondents have issued a revised seniority list dated 29.1.2016 (Annexure A/11), which is also impugned in this OA. The applicants have added the respondents No. 5 to 22 in this OA, who were directly recruited employees placed above the applicants in the impugned seniority list. One of the main arguments of the applicants is that though the respondents No.5 to 22, have joined as SFO on direct recruitment subsequent to the applicants' joining, they have been shown to be senior to the applicants in the impugned seniority list.

5. The counter filed by the respondents stated that the action taken by the respondents is in accordance with the judgment of Hon'ble Apex Court in the case of N.R.Parmar (Supra) by which, the principle for determining the seniority of the direct recruits was inter alia laid down. It is stated that the applicants No. 1 to 4 are from the promotee batch of 2011-12, while the applicant No. 5 is from the promotee batch of 2012-13. It is further averred that the recruitment process for 12 vacancies of SFO was initiated in the recruitment year 2006-07 and after written examination and interview, a panel of 22 candidates was prepared. It is stated that the joining in the direct recruitment cases is generally after a period of 3-5 years from the date of finalisation of the panel in view of the time required to complete post-selection formalities. It is stated that all the candidates who joined from the direct recruitment panel have been placed in the seniority list against the vacancy year 2006-07 in order of merit, irrespective of their actual date of joining as per the ratio of the judgment in N.R.Parmar case and the DOPT OM dated 04.03.2014(Annexure-A/9). The promotee officers who had joined prior to such directly recruited officers, have represented that the direct candidates who joined after them have been placed above them in the seniority list. It is further stated in the counter that the direct recruitment candidates were placed based on vacancy year in the seniority list although they were issued the appointment order subsequently after verification of the education certificates, caste certificates and antecedents which took time. It is stated that the seniority of the officers have been fixed as per the DOPT OM dated 7.2.1986 (Annexure R/1), 3.7.1986 (Annexure R/2) and 4.3.2014 (Annexure R/3) keeping in view the judgment dated 27.11.2012 of the Hon'ble Apex Court in the case of N. R. Parmar –vs- Union of India. It is further stated in the counter that mere fulfilling of the qualifying service is not the criteria for promotion, since other factors like availability of vacancies, zone of consideration, reservation, etc. are required to be fulfilled by the candidates for promotion. The delay in promotion of the applicants from the previous post cannot be attributed to the department. It is stated as per the OM dated

4.3.2014 of DOPT, the OM dated 7.2.1986/3.7.1986 would apply for deciding the inter se seniority between the direct recruit and promote officials prior to the date of the judgment of Hon'ble Apex Court in the case of N.R.Parmar (supra) i.e. 27.11.2012.

6. The respondents have filed another Counter for the consolidated OA, stating in para 7, 8 and 19 of the Counter that for the direct recruits selected on the basis of the interview from out of the candidates from the UPSC, who had appeared for the IES examination conducted by the UPSC in the year 2010 a panel of 22 candidates were prepared and 14 candidates were in the reserve panel. Prior to that, on the basis of the vacancy in the year 2006-07, another selection process was conducted through a written examination and a panel of 22 candidates were prepared for direct recruits vide Annexure-R/4 of the first Counter. It is averred that the candidates selected in the panel at R/4 against 2006-07 vacancy, were placed against the seniority for the year 2006-07 as per the DOPT instructions referred above according to their relative merit in the approved panel, irrespective of their date of joining. The delay in joining of the direct recruits was stated to be due to the delay in verification process, a contention which is disputed by the applicants. It is stated that the recruitment from the UPSC list was resorted in the year 2010 to address the problem of the shortage of officers in the cadre. It is stated in para 9 and 10 of the Counter filed in the consolidated OA (in short referred hereinafter as 'CC') as under:-

"9. The candidates as above were considered under direct recruitment quota. Since these candidates were selected on the basis of marks obtained by them in the relevant tests which were held for the vacancy year 2006-07 & 2011-12, so accordingly they have been placed in the relevant recruitment year i.e. 2006-07 & 2011-12 in the respective final seniority list. Hence, there is no force in the submissions of the applicants with reference to disputing relevant recruitment 7 seniority list.

10. That in reply to the contents of the para-1, it is submitted that the selection process undertaken at the end of the respondents' office is purely based on the relevant rules and instructions in vogue in this regard. Details of 02 Selection Processes practiced for the vacancy year 2006-07 & 2011-12 have been given in the brief history above contents of which are reiterated here which justifies stand of the department & scuttles the submissions of the applicants. In assigning the seniority to the private respondents & applicants the primary respondents have followed the recruitment rules, vacancy year, prescribed norms & rulings of the Hon'ble Apex Court specifically the judgment & order passed in N.R.Parmar case on the basis of which guidelines to the present effect have been formulated by the DOP&T. In view of the same there is no force in the submissions of the applicants with respect to their seniority & induction of the private respondents into respondents' organization."

7. The averments in para 4.6 of the OA is that the persons selected on the basis of 2006-07 vacancy were appointed subsequently due to non-availability of vacancy to accommodate them. The respondents, in para 17 of the CC have denied the same by stating that the private respondents were appointed as per the available vacancy and their seniority has been correctly fixed as per the DOPT instructions. It is averred in para 21 and 33 of the CC as under:-

"21. That, in reply to the contents of the para 4.10 the respondents state that the draft seniority list of SFO(Tech) was first circulated on 27.6.2014 & the same was revised and re-circulated vide memo dated 23.9.2014 and the final seniority list of SFO(Tech) has been issued vide respondents memo dated 29.1.2016 (Annexure A/11 to the OA). It is pertinent to mention here that the seniority list under reference has been formulated in terms of DOP&T OM No. 35014/2/80-Estt(D) dated 7.2.1986, OM No. 22011/786-Estt(D) dated 3.7.1986, OM No. 20011/1/2012-Estt(D) dated 4.3.2014, over and above Hon'ble Apex Court judgment order dated 27.11/2012 in Sh. N.R.Parmar –vs- UOI & was taken cognizance of in formulation of the seniority list thus no injustice has been caused to either incumbents.

33.The officers selected on direct recruitment for Recruitment Year 2006-07 (whether from the select panel or reserve panel whose names were released after cancellation of candidature of candidate from select panel following due process), have been given seniority in the Recruitment Year 2006-07 irrespective of their date of joining, maintaining inter se seniority with promotes of the same Recruitment Year since both panels (select and reserve) are from the same recruitment process. The comments of respondents on delay in joining of Direct Recruit candidates have been averred against para 4.7 above contents of which are reiterated here for the sake of brevity.”

8. Rejoinder has been filed by the applicants enclosing a copy of the order dated 31.5.2016 of the Principal Bench of this Tribunal in OA No. 591/2009 and OA No. 2981/2009, in which a similar dispute of inter se seniority of the employees under the Railways was decided. The most of the contentions made in the OA have been reiterated. The example of two employees have been cited in the rejoinder, one of which one was selected against vacancy year 2011 joined the post on 6.6.2013. Another Officer selected against the vacancy for the year 2006-07 joined in the cadre on 18.06.2013 on direct recruitment, but he has been shown against the seniority of 2006-07. It is stated that although the select list for direct recruitment was prepared in the year 2008, the currency of the said panel was continued for indefinite period (till 2013) and the persons, allowed to join after a number of years, were assigned higher seniority than the persons who joined in the cadre on promotion prior to them. It is stated that after transfer of some posts to other departments there were 87 posts of SFO for which the direct recruitment quota should have been 22(at the rate of 25 %). In the draft seniority list circulated in 2008, 6 number of direct recruit SFOs, were available in the cadre leaving 16 vacancies. Hence, the preparation of panel for 22 existing vacancy for the year 2006-07 was not in order. It is further averred that as per the existing law, the currency of the panel should remain valid for one year and further extension of one year was allowed. Therefore, the selected panel approved on 14.12.2007 (Annexure R/4 of the first counter) should not have been kept alive to enable joining of the candidates from the panel after a number of years from the date of approval of the said panel. The contention in the counter that the delay was due to verification of character and antecedents by different agencies have been also objected to, since in some cases verification process has taken about 6 years as stated in the rejoinder. It is stated that the direct recruitment quota has been filled up in excess by about 8 numbers of candidates and it is averred that the respondents have diverted promotion quota posts for direct recruitment in violation of the Recruitment Rules. Rejoinder has also cited the following judgments in support of the averments of the applicants:-

- i) Bishan Sarup Gupta –vs- Union of India [(1973) 3 SCC1]
- ii) V.B.Badami –vs- State of Mysore [(1976) 2 SCC 901]
- iii) Uttaranchal Forest Rangers' Assn. (Direct Recruits) & Ors. –vs- State of U.P. & Others [(2006) 10 SCC 346]
- iv) State of Uttaranchal & Anr. –vs- Dinesh Kumar Sharma [(2007) 1 SCC 683]
- v) Union of India & Others –vs- N.R.Parmar & Others [(2012) 13 SCC 340]
- vi) OA No. 3596/2011 dated 5.9.2013 of CAT, Principal Bench.
- vii) H.V.Pardasani –vs- Union of India & Others [AIR 1985 SC 791]
- viii) P.S.Mahal & Others –vs- Union of India [AIR 1884 SC 1294]
- ix) A.Janardana –vs- Union of India [AIR 1983 SC 769]

- x) N.K. Chauhan –vs- State of Gujarat [1977 1 SCC 308]
- xi) A.N.Pathak –vs- Secretary to the Government [AIR 1987 SC 716]
- xii) S.G.Jaisinghania –vs- Union of India [AIR 1967 SC 1427]
- xiii) Suraj prakash Gupta –vs- State of J&K [AIR 2000 SC 2386]
- xiv) Ammini Rajan & Others –vs- Union of India [OA 1356/1997, CAT, Principal Bench]
- xv) AFHQ/ACSOs/SOs (DP) Association & Othrs –vs- Union of India & Others [CA No. 1384 of 2008 arising out of SLP(C) No. 4545 of 2007 and CA No. 1385 of 2008 arising out of SLP(C) No. 5953 of 2007]
- xvi) Pawan Pratap Singh & Others –vs- Reevan Singh & Others [(2011) 3 SCC 267]

9. It is further stated in the Rejoinder that as per Government of India, Department of Personnel & Training OM dated 7.2.1986 if the vacancy could not be filled up, the unfilled vacancies were filled up later through a subsequent process of selection. The manner of determining inter se seniority between promotee and direct recruits was modified from the provisions in the earlier OM dated 22.12.1959. As per the OM dated 7.2.1986 of the DOPT, the rotation of quota as stipulated in the OM dated 22.12.1959 is to be adopted only to the extent of available direct recruits and promoted officials in the panel and the vacancies which could not be filled up through the process of selection or examination conducted for the recruitment year, will be carried over to the subsequent years and the rotation of quota principle will be stopped after all the candidates in the panel are exhausted. As stated in paragraph 6 of OM dated 7.2.1986, the general principles for determining seniority as per OM dated 22.12.1959 will be modified to the extent as provided in the said OM. It is averred in the rejoinder that as per the judgments of the Hon'ble Apex Court, a direct recruit through a later selection cannot claim seniority before he was borne in the service and he can claim seniority only from the date of his regular appointment. The later direct recruit cannot claim deemed dates for seniority w.e.f. the time when the direct recruitment vacancies arose. It is also stated that the notional seniority cannot be granted from the back date. If it is done, it must be done on objective considerations and on valid classification and must be permitted under the rules. It is stated that the seniority of an employee cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively, unless it is provided under the relevant service rules. Hence, it was stated that the department be directed to follow rota quota principle to fix up seniority of the directly recruited employees from the date when direct recruit quota was introduced and to implement the OM dated 4.3.2014 of the DOPT regarding inter se seniority of the direct recruits and promotees.

10. The respondents have filed MA No. 376/2019 by which it was informed that final seniority list of the SFOs under the respondents as annexed to the MA was published on 10.12.2018 and the same was circulated, but the applicants have not raised any grievance with regard to their seniority in the said list.

11. Heard learned counsels for the applicant and respondents. Copies of the judgments in the Civil Appeal No. 4594-4595 of 2017 (Sunaina Sharma & Others –vs- State of Jammu & Kashmir & Others), in the case of State of Bihar & Others –vs- Amarendra Kumar Mishra [(2007) 2 SCC(L&S) 132], in the case of Girdhar Kumar Dadhich &

Anr. –vs- State of Rajasthan & Others [AIR 2009 SC 1899] and the case of Public Service Commission, Uttaranchal –vs- Mamta Bisht & Others [AIR 2010 SC 2613] have been filed by the learned counsel for the applicants. Learned counsel for the respondents submitted a brief written note summarizing the case of the respondents. It has been stated in the brief note of the respondents that for the year 2006-07 recruitment process for 22 vacancies were initiated and after examination and interview the panel dated 14.12.2007 (Annexure R/4) was approved by the competent authority. Many of these candidates selected for direct recruitment, joined after a delay of about 3-5 years due to delay in verification of character and antecedents. It is also stated that due to non-joining of some of the candidates from the main panel, reserve panel was operated, resulting in further delay in joining of the candidates from the reserve panel prepared for the year 2006-07. It is stated that their seniority was given for the recruitment year 2006-07 irrespective of their date of joining. The subsequent process for 22 vacancies were taken up in 2010-11 after taking waitlisted candidates in IES examination held by UPSC. The relative seniority list was determined as per OM dated 7.2.1986, 3.7.1986 and 4.3.2014 as well as the judgment of Hon'ble Apex Court dated 27.11.2012 in the case of N.R.Parmar (supra). Accordingly, the direct recruited candidates have been placed in the seniority list against the vacancy year for 2006-07 and 2011-12 in order of merit both for main as well as reserve panel irrespective of their actual date of joining. The direct recruits who joined later after some of the promoted candidates in some cases, have been placed senior to the later depending on the vacancy year for which they were recruited. The draft seniority list of SFOs as issued on 26.9.2018 which was finalised on 10.12.2018 after furnishing copy of all officers who represented against the draft seniority list. It is also stated that a total of 35 officers in the grade of SFO have been promoted in the meantime to the post of Assistant Director (T), including the applicant no.1, vide order dated 17.7.2019. These orders are passed subject to final outcome of this OA.

12. Learned counsel for the applicant in reply, reiterated that the panel for the direct recruits approved in 2006-07 cannot be kept alive indefinitely and the officers joining much after should not be given the retrospective seniority. He has cited the judgment in the case of Sunaina Sharma (supra), in which the dispute related to the fact that the private respondents were allowed retrospective promotion in the cadre, for which they were placed senior to the appellants in that case. The Division Bench of the Hon'ble High Court in that case held that since the promoted officers were against pensionable post in the feeder category they were considered to be members of the service for which they satisfied the provisions of the Rule 23 under which promotions were given. This position was not accepted by the Hon'ble Apex Court with the finding that before joining in the promoted post, the promoted officials cannot be deemed to be members of the service in that particular cadre in question.

13. In the case of Amarendra Kumar Mishra (supra) cited by the applicants' counsel, the employee in that case could not join the post within stipulated time after he was selected. After a lapse of time, he requested for issue of fresh appointment order since the persons below his rank were appointed. When the matter went up to Hon'ble High Court, direction was given to the respondents to allow the employee to join after issue of appointment order. It was held by Hon'ble Apex Court that if one of the candidates failed to join in response to the appointment order, the waiting list candidates can be considered and no relief could have been granted by the Hon'ble High Court to the candidate who failed to join within the stipulated time. Hence, if a candidate fails to join a selected post within stipulated time and no request for extension of time was made, then he cannot exercise his right for appointment when candidates with lower merit are appointed.

14. In the case of Girdhar Kumar Dadhich (supra) it was held as under :

“19. Furthermore the select list would ordinarily remain valid for one year. We fail to understand on what basis appointments were made in 2003 or subsequently. Whether the validity of the said select list was extended or not is not known. Extension of select list must be done in accordance with law. Apart from a bald statement made in the list of dates that the validity of the said select list had been extended, no document in support thereof has been placed before us. [In State of Rajasthan & ors. vs. Jagdish Chopra](#) [(2007) 8 SCC 161], this Court held:

“9. Recruitment for teachers in the State of Rajasthan is admittedly governed by the statutory rules. All recruitments, therefore, are required to be made in terms thereof. Although Rule 9(3) of the Rules does not specifically provide for the period for which the merit list shall remain valid but the intent of the legislature is absolutely clear as vacancies have to be determined only once in a year. Vacancies which arose in the subsequent years could be filled up from the select list prepared in the previous year and not in other manner. Even otherwise, in absence of any rule, ordinary period of validity of select list should be one year. [In State of Bihar v. Amrendra Kumar Mishra](#) (2006) 12 SCC 561, this Court opined: (SCC p.564, para 9) “9. In the aforementioned situation, in our opinion, he did not have any legal right to be appointed. Life of a panel, it is well known, remains valid for a year. Once it lapses, unless an appropriate order is issued by the State, no appointment can be made out of the said panel.”

It was further held: (SCC p.565, para 13)

13. The decisions noticed hereinbefore are authorities for the proposition that even the wait list must be acted upon having regard to the terms of the advertisement and in any event cannot remain operative beyond the prescribed period.” xxx xxx xxx

11. It is well-settled principle of law that even selected candidates do not have legal right in this behalf. ([See Shankarsan Dash v. Union of India](#) (1991) 3 SCC 47, and [Asha Kaul v. State of J&K](#) (1993) 2 SCC 573)“

15. In the case of Mamta Bisht (supra) cited by the applicant it was held as under :

“6. It is settled legal proposition that vacancies over and above the number of vacancies advertised cannot be filled up. Once all the vacancies are filled up, the selection process comes to an end. In case a selected candidate after joining resigns or dies, the vacancy, so occurred cannot be filled up from the panel, which stood already exhausted. (Vide Rakhi Ray & Ors. Vs. The High Court of Delhi & Ors. AIR 2010 SC932).

However, in the instant case, the advertisement itself made it clear that the vacancies could be increased and decreased and before completion of the selection process, a decision had been taken to fill up 42 instead of 35 vacancies and reservation policy had been implemented accordingly.”

The claim in that case was to consider the case of the respondents basing on the fact that some additional vacancies were available. Hon’ble High Court directed for consideration of the case, making a distinction between the vertical reservation and horizontal reservation. Hon’ble Apex Court set aside that the decision of High Court.

16. In the cases cited on behalf of the applicants, the facts are distinguishable from the facts of the present OA, in which the dispute related to the basis for determining the inter se seniority between the direct recruits and the promoted officials in accordance with the provisions of respective Recruitment Rules as well as the guidelines of the DOPT. The contention of the applicant that the direct recruit candidates have been accommodated much beyond the available vacancies during that recruitment year and they have been wrongly assigned higher seniority, has been denied by the respondents. There is no document furnished by the applicant in support of the contention that number of direct recruitment vacancies for a particular year was less than the number of candidates who were selected direct recruitment for the year and then appointed against

the vacancy of that year, although they joined subsequently due to delay in verification of their antecedents. The averment in the Rejoinder that total cadre strength of SFOs was 87(out of which the direct recruitment quota in 22), is not supported by any document on record. Hence, the principle that recruitment should not exceed the vacancies notified, has not been violated in this case as would be revealed from the records. Hence, the question for determination in this case is whether the contention of the respondents that the seniority has been correctly fixed in accordance with the DOPT OM dated 7.2.1986, 3.7.1986 and 4.3.2014 is correct.

17. From the undisputed facts, it is clear that after the main panel was exhausted, the reserve panel for that particular year of vacancy i.e. 2006-07 and 2011-12 had been operated and some candidates from reserve panels were selected and they joined in subsequent years. In other words, the recruitment for that particular vacancy year had been made in two attempts. In the first attempt, the candidates from the approved panel were covered subject to verification of antecedents, without operating the reserve vacancy or waitlisted vacancies. When some vacancies were still left, the candidates from reserve list were selected by the respondents. The question is whether the candidates selected from reserve panel can be given the benefit of seniority of the vacancy year at par with the candidates selected from the original panel as per the OMs of the DOPT as referred above.

18. Before we proceed to consider the contentions of the OMs of the DOPT, it is noted that the dispute in this case has arisen since the respondents have taken abnormally long time for completing the formalities like verification of the antecedents done of the candidates selected in the process of direct recruitment. Although it is mentioned in the counter that due to procedure of verification and number of vacancies involved, such delay occurs in the process. But if such delay is abnormal exceeding more than 3-5 years in some cases as in the case in this OA, then it may give rise to complications vis-à-vis other employees. Since no specific prayer has been made in the OA regarding such procedure, we have not examined the matter further and leave the issue with observation that the respondents are to find out the ways and means to minimise the delay in completing post-selection formalities in direct recruitment cases.

19. Learned counsel for the applicants have enclosed a copy of the order dated 31.5.2016 passed by the Principal Bench of the Tribunal in OA No. 591/2009 (Annexure A/13). The dispute in that OA was regarding the fixation of the inter se seniority between the direct recruits as well as the promoted Section Officers of Railway Board Secretariat Service (in short RBSS). The grievance in that OA was that the persons who were recruited under direct recruit quota were given undue advantage in terms of fixation of seniority, which was challenged before the Tribunal in OA 591/2009. It was stated on behalf of the applicants before the Tribunal that the rotation of quota as per the existing vacancy in a particular recruitment year had never been followed in RBSS resulting in failure of rotation of quota system and that an officer directly recruited cannot be assigned seniority earlier than his recruitment year in violation of the rules by adversely affecting the promotees. It was further alleged that unfilled direct recruitment posts for previous years have been wrongly carried forward and the direct recruits have been given higher seniority against these carried over vacancies. The stand of the respondents in that case was that seniority was fixed strictly in accordance with the rules. It was observed in the cited order dated 31.05.2016 that rotation of quota system had broken down in RBSS since the Railway authorities had not followed the DOPT OM dated 07.02.1986 and 03.07.1986 while determining inter se seniority of the direct recruits and promoted officials as SO in RBSS. Hence, the cited case is factually different from the present OA in which the respondents have claimed to have fixed seniority as per the DOPT OM basing on rotation of quota principle which has not broken down. Hence, the ratio of the order dated 31.05.2016 of the Tribunal cited by the applicant's counsel will not be at any help for the present case of the applicants.

20. Regarding the inter se seniority, the OM dated 7.2.1986 (Annexure R/1 of the first counter) of the DOPT, it is stated that the practice of keeping the vacant slots for being filled up by direct recruits of subsequent years was dispensed with and it was decided that the rotation of quotas for purpose of determining seniority will take place in particular vacancy, only to the extent of available direct recruit candidates and promotees. If the direct recruits are not available from the select list, then the promotees will be placed in the bottom of the seniority list below the last direct recruit person of that year and unfilled direct recruitment quota will be carried forward and added to the subsequent year vacancy when the recruitment takes place. In subsequent year also seniority will be determined between the direct recruits and promotees to the extent of the candidates available in panel for that years. The additional direct recruits selected against the carried forward vacancies of the previous year will be placed enblock below the last promotee in the seniority list based on the rotation of quota for that year.

21. The OM dated 3.7.1986 (Annexure R/2 of the first counter) consolidated the guidelines for determining the inter se seniority and reiterated the procedure specified in OM dated 7.2.1986. Thereafter, in the OM dated 4.3.2014 (Annexure R/3 of the first counter), the issue was examined by the DOPT in the light of the judgment dated 27.11.2012 of Hon'ble Supreme Court in the case of N.R.Parmar –vs- Union of India & Others and it was specified that in addition to the provision for determination of seniority as per OM dated 7.2.1986 it was also specified that the recruitment year would be the criteria for assignment of inter se seniority for direct recruits and promotees and recruitment year would be the year in which recruitment process against a vacancy year is initiated i.e. requisition is sent to the recruiting agency for filing up the vacancies and for promotes the date when the proposal is sent to the Chairman, DPC/UPSC for convening the DPC for promotion. It is also stated that the carried forward of the vacancy against direct recruitment or promotion quota would be determined from the appointment against the first attempt for filling up of the vacancy for a recruitment year. These guidelines in OM dated 4.3.2014 were effective from 27.11.2012.

22. From the above, it is clear that when a candidate joins service after 27.11.2012, his/her seniority is to be determined in accordance with the OM dated 4.3.2014. If he was selected from the select panel in the first attempt for a particular recruitment year/vacancy year relating to the period prior to 27.11.2012 and he joined subsequent to 27.11.2012, then his seniority is to be fixed according to the rotation of quota for the recruitment year/vacancy year in question as per the OM dated 7.2.1986. However, this benefit will not be available to a candidate selected from the reserve panel (which is not the first attempt of recruitment) and if he/she has joined after 27.11.2012, since the OM dated 04.03.2014 will be applicable to his case and his inter se seniority will be below the last person of the promoted officer for that particular vacancy year. On the other hand, if such a person selected from the reserve panel, joined prior to 27.11.2012 in the cadre, his/her inter se seniority will be determined as per OM dated 7.2.1986 as per the rotation of quota principle, since prior to 27.11.2012, first attempt principle as per the OM dated 04.03.2014 was not in force.

23. In view of the above discussions, if any of the respondent no.5 to 22 was selected from the reserve panel for direct recruitment and he/she joined the service on or after 27.11.2012, then his/her seniority will be placed at the end of all the direct recruit and promoted officials for that recruitment year, as per the OM dated 04.03.2014 of the DOPT. We are unable to accept the prayer for other reliefs since for the respondents no.5 to 22, except for those who were selected from the reserve panel and had joined on or after 27.11.2012, their inter se seniority has been fixed as per the instruction of the DOPT and we do not find any infirmity in the decision of the respondents.

24. The OA is disposed of with direction to the respondent nos.1, 2, 3 and 4 to review the inter se seniority of those out of the respondent nos.5 to 22 who were selected from reserve list and had joined service on or after 27.11.2012 in terms of the paragraph 23 above. There will be no order as to costs.”

3. But thereafter the Hon’ble Apex Court had taken a different view in Civil Appeal No.8833-8835/2019 dated 19.11.2019, which we quote:

“J U D G M E N T

Hrishikesh Roy, J.

Leave Granted.

2. These matters pertain to an inter-se seniority dispute in the Manipur Police Service Grade II Officers Signature Not Verified Digitally signed by MAHABIR SINGH Date: 2019.11.19 Cadre, hereinafter referred to as “MPS Grade II Cadre”. The appellants before us in the SLP (C) No. 19565-67 of 2019 were few of the respondents in the W.P. (C) No. 366 of 2013. They are to be described hereinafter as “direct recruits”. The respondents in this SLP were the Writ Petitioners in the High Court who were appointed on promotion to the MPS Grade II Cadre. For clarity and ease of understanding, they are being referred as “promotees” in this judgment.

3. Prior to their induction (on 01.03.2007) to the MPS Grade II Cadre, the promotees were serving as Inspector of Police and they were granted promotion on the basis of a duly constituted Departmental Promotion Committee (DPC). On the other hand, the Private Respondents 3 to 32 and no. 33 in the Writ Petition (C) No. 366 of 2013 were directly recruited into the MPS Grade II Cadre, vide the respective orders dated 14.08.2007 and 24.11.2007.

4. Appointment and seniority in the Manipur Police Service is governed by the Manipur Police Service Rules, 1965 (hereinafter referred to as “the MPS Rules, 1965”). After considering the claims and objections and in compliance with the Court’s direction (18.02.2013) in W.P(C) No. 235 of 2012, the Govt. of Manipur, applying the principle of dovetailing between the promotees and the direct recruit officers, issued the Order on 17.5.2013 publishing the final seniority list (as on 01.04.2013), of the MPS Grade II Officers. The promotees challenged this through the Writ Petition (C) No. 366 of 2013 in the High Court of Manipur. By amending their Writ Petition, the promotees also challenged the subsequent Govt. orders dated 20.01.2014 and 19.02.2014 where the direct recruits were placed above them.

5. Before the Writ Court, the promotees contended that they entered the MPS Grade II Cadre on 01.03.2007 whereas the private respondent nos.3 to 33 were appointed subsequently (on 14.08.2007 and 24.11.2007 respectively) and, therefore, they should be regarded as senior to the direct recruits.

6. The direct recruits on the other hand claimed seniority over the promotees by contending that seniority has to be decided in accordance with the year of the vacancy and not by the fortuitous date on which, the appointment could be finalized for the direct recruits.

7. In an earlier proceeding i.e., Writ Petition (C) No. 235 of 2012, in an inter-se seniority dispute amongst the direct recruits and promotees in the MPS Grade II Cadre, the State in their counter affidavit took the stand that seniority should be determined from the date on which the person was appointed but not from the date of vacancy. For the direct recruits appointed on 14.08.2007 against the vacancy of 2004-2005 it was averred that their seniority should be counted from the date of appointment.

8. The learned Judge heard the parties, applied his mind to the Office Memorandums produced before him and by the common judgment dated 07.07.2017 quashed the impugned orders. It is seen that single Judge directed that the batch of promotees appointed on 01st of March 2007 must be given seniority above the direct recruits appointed on 14th August, 2007 and he justified this by stating that a direct recruit can claim seniority only from the date of his regular appointment and cannot claim seniority from a date when he is not borne in the service. For this conclusion, the learned Judge had relied upon, *inter alia*, the ratio in *Jagdish Chandra Patnaik' vs. State of Orissa*¹. The Court also held that the expression "year" must refer to financial year and not calendar year. Support for such conclusion is based on the Office Memorandum dated 29.4.1999 which contains instructions to be followed by DPC in the matter of holding its meetings towards promotion which is one of the methods of recruitment. This Memo specifies that the recruitment year would be treated as the financial year. Besides the Manipur Reservations of Vacancies in Posts and Services (for Schedule Castes and Schedule Tribes) Act of 1976 which was enacted on 24th February, 1977, for short "the Manipur (SC & ST) Act, 1976", provided that the term meant financial year. It was also seen that on 18.12.2009, the State of Manipur amended the Manipur Police Service Rules of 1965 by introducing sub-rule 2(g) defining the word "year" to mean calendar year. This amendment had provided that it would come into force with effect from the date of publication in the official gazette of Manipur thereby making it plain that the same was not intended to have any retrospective effect. The learned Single Judge relied on this to hold that prior to the date of this notification, the word "year" could not be said to be calendar year but would mean the financial year.

9. In consequence, the learned Single Judge held that the promotees get entry into the cadre in the recruitment year 2006-2007 whereas the direct recruits would stand appointed in the recruitment year 2007 -2008. There being no overlap between the promotees and direct recruits as far as the year of recruitment is concerned, applying Rule 28(iii) to dovetail the two streams using the principle of rotation of quota, would not arise. It was accordingly determined that the impugned seniority lists are bad in law and all action taken thereunder are rendered null and void. The following directions were then issued by the learned Judge in his common judgment dated 07.07.2017:-

".....

(14) For the reasons stated herein above, the writ petitions being WP(C)No.366 of 2013 and WP(C)No.120 of 2014 are allowed and consequently, the Government orders dated 17-05-2013, 20- 01-2014 and 19-02-2014, impugned herein, in respect of the petitioners and the private respondents, are quashed and set aside with the following directions:

- (a) The State Government shall prepare a seniority list afresh in respect of the MPS Officers, after taking into account the observations made by this Court hereinabove, within a period of three months from the date of receipt of a copy of this judgment and order;
- (b) While preparing the seniority list of MPS Officers, the State Government shall follow the guidelines/instructions contained in the Office Memorandum dated 07-02-1986 which is adopted by the State Government vide its Office Memorandum

dated 13-11-1987 as directed vide order dated 18-02-2013 passed by the Hon'ble Gauhati High Court in WP(C)No.235 of 2012. There shall be no order as to costs.”

10. Aggrieved by the declaration of inter-se seniority favouring the promotees, few direct recruits including the respondent no.14 K. Meghachandra Singh and others filed the Writ Appeal No.49 of 2017. This Appeal in the Manipur High Court was transferred to the Gauhati High Court and was re-numbered as Writ Appeal No. 66 of 2018. The State Government did not however challenge the analogous judgment (07.07.2017) rendered in the Writ Petition (Civil) No.366 of 2013.

11. The Division Bench upheld the conclusion of the Single Judge but confined its justification to the principle that seniority for direct recruits could not be reckoned from a date prior to their appointment. In doing so, it approved the finding of the Learned Single Judge to the same effect.

12. The Division Bench did not however feel it necessary to go into the question as to whether “year” means “calendar year” or “financial year”. They felt that the position being very clear, there was no reason to embark upon the interpretation of the word/words “year” or “for that year”, as was done by the Learned Single Judge.

13. It was also made clear that the promotees will naturally have seniority over the Appellants as they had entered the cadre of MPS Grade II, before the Writ Appellants were borne in the cadre.

14. Following the above judgment (26.09.2018) in the Writ Appeal No.66 of 2018 against the direct recruits, K. Meghachandra Singh and others filed the Review Petition No. 10 of 2019. But neither on 04.04.2019 nor on 10.04.2019, the counsel for the direct recruits were present before the Gauhati High Court and accordingly the Review Petition was dismissed for non-prosecution, through the order dated 10.04.2019. The I.A.(C)No.1741 of 2019 was then filed by K. Meghachandra Singh for restoration of the Review Petition; but the restoration was held to be unmerited and accordingly the I.A. filed by the direct recruits was dismissed on 24.05.2019.

15. Aggrieved by rejection of their Writ Appeal and the related petitions, the direct recruits have approached this Court with the Special Leave Petition (C) No.19565-67 of 2019 to challenge the decisions of the High Court.

16. Assailing the impugned judgment and orders, Mr P.S. Patwalia, the learned Senior Counsel contends that seniority of the direct recruits in the MPS Grade-II Cadre must be reckoned from the time when vacancies occurred and should relate to the requisition (29.07.2005) made to the Manipur Public Service Commission, to fill up the vacancies. According to him, the date of actual appointment of the appellants on later dates (14.08.2007 and 24.11.2007), shouldn't impact the inter-se seniority of the direct recruits vis-à-vis the promotees, who were promoted to the cadre on 01.03.2007.

17. The Senior Counsel cites Union of India and others Vs. N.R. Parmar, (2012)13 SCC 340, to argue that when action was initiated for filling up the 2005 vacancies, the administrative delay in finalization of the recruitment leading to delayed appointment should not deprive the individual of his due seniority. By referring to the rotation of quota principle, the counsel argues that initiation of action for recruitment in the year of the vacancy would be sufficient, to assign seniority from that year.

18. According to Mr. Patwalia, the Learned Single Judge erroneously interpreted “recruitment year” as “financial year” in order to confer higher seniority position to the promotees vis-à-vis direct recruits as both groups were appointed in different months of the same year i.e. 2007. The Counsel refers to the 1989 Amendment (18.12.2009) of the MPS Rules to point out that recruitment year has been clarified as “calendar year” and therefore, there is no necessity to interpret the expression.

19. The Senior Counsel then refers to Rule 28(iii) of the MPS Rules to highlight that seniority of the direct recruits and promotees are to be determined on the principle of rotation of vacancies under Rule 5 for that year and therefore, the promotees cannot be placed en-bloc above the direct recruits merely because, they were promoted on an earlier date i.e. 01.03.2007, particularly when, the recruitment process for the direct recruits commenced in the year 2005 itself.

20. Representing the respondents/promotees, the learned Senior Counsel, Shri Jaideep Gupta refers to the MPS Rules, 1965 to argue that the provisions of the Rules make it abundantly clear that inter-se seniority in the cadre of MPS Grade-III is to be determined by the order in which appointments are made to the service. The counsel pointedly refers to Rules 28 (i) where it is specified that the seniority in the service shall be determined by the order in which appointments are made to the service..... He also refers to the later part of Rule 28(iii), where again it is specified that the “seniority of the officer..... shall be counted from the date, he/she is appointed to the service..... The provisions in Rule 16(iii) are pressed home by Mr Gupta to argue that only when the person is appointed, he shall be deemed to have been appointed to the service from the date of encadrement.

21. The judgment in N.R. Parmar (Supra) is read with equal emphasis by Mr Gupta to firstly point out that this case does not lay down the correct law in determination of seniority. The counsel highlights the incongruity in a situation where a person who entered service later will claim seniority above those who joined service at an earlier point of time. The applicability of the ratio in N.R. Parmar (Supra) to the litigants in the present case is also questioned by Mr Gupta by pointing out that the provisions of MPS Rules, 1965 applicable for the officers in the Manipur Police Officers, was not the subject of consideration in N.R. Parmar (Supra), and, therefore, the said ratio relatable to Income Tax Inspectors, with different Service Rules, will not apply to the present case.

22. The learned Senior Counsel, Mr Gupta, then refers to the office Memorandum dated 07.02.1986 and the illustration provided in the same Office Memorandum to explain the carry forward principle to argue that the judgment in N.R. Parmar (Supra) misconstrued the legal implication of the OM. According to the counsel, the MPS Rules 1965 did not refer to the financial year as was done by the learned Single Judge or even the calendar year as was mentioned by the Division Bench in as much as the Rules make it abundantly clear that inter-se seniority has to be reckoned from the date of appointment. It is, therefore, argued that the 2005 requisition for the direct recruit vacancies, can have no bearing on the inter-se seniority of those who were borne in the cadre on an earlier date vis-à-vis those who entered service later, like the direct recruits.

23. The respondent's counsel would then submit that reference to the Office Memorandum and the other notifications to decide the inter-se seniority in the MPS Grade-II Cadre would be unnecessary inasmuch as the Rules i.e. MPS Rules, 1965 makes it amply clear that the date of entry in service should be the basis of reckoning the seniority of an incumbent.

24. The State of Manipur is represented by Mr V. Giri, the learned Senior Counsel and he refers to the somewhat inconsistent views between the Single Judge and the Division Bench in the matter of interpretation of the expression “recruitment year”. He submits that while determining the inter-se seniority of the Manipur Police Service Officer, the applicable Service Rules should be the basis instead of resorting to an interpretive exercise particularly when, there is no scope for ambiguity in the Rules.

25. The learned Senior Counsel for the State then points out that although the Single Judge interfered with the impugned seniority lists prepared by the Manipur Government, the State did not challenge this judgment but have filed the SLP(C)

No.19568-69 of 2019 to challenge the Division Bench Judgment in the Writ Appeal No.66 of 2018.

26. Mr Giri refers to the MPS Rules, 1965 (2nd Amendment), 2009 published vide notification dated 18.10.2009 which defines the recruitment year as the “calendar year” but submits although the Govt. had issued the revised notification (29.06.2019) following N R Parmar (Supra), it will again revisit the seniority list as per the Court’s directions.

27. At this stage it needs to be recorded that although the promotees approached the concerned authority for compliance of the direction passed in their favour, the Manipur Government did not take any action. Then the respondents filed the Contempt Case(C) No.224 of 2018 where the Government Advocate appeared and requested for time for reporting compliance. The State’s Advocate General thereafter informed the Court that the seniority list has been revised and sought time for submitting compliance report. On the next date, the Advocate General produced a copy of proceeding No.22/2/1989–MPS/DP(PT-II), dated 29.06.2019 issued by the Under Secretary (DP), Government of Manipur and submitted that the order of the High Court has been complied. Accepting this submission, the closure of the Contempt Case(C) No.224 of 2018 was ordered on 02.07.2019. As this case was filed by one of the promotees i.e., Ningam Siro, the aggrieved party has filed the Special Leave Petition No.17007 of 2019 to challenge the High Court’s closure Order. Representing him, the learned Senior Counsel Mr Jaideep Gupta submits that the High Court should have examined the purport of the proceedings dated 29.06.2019 to satisfy itself about the actual compliance instead of blindly accepting the submission of the Advocate General, to order closure of the contempt case.

28. The contention raised by the learned Counsel for the parties have been considered and the impugned orders and the relevant materials on record have been perused.

29. Before proceeding to deal with the contention of the appellants’ Counsel vis-à-vis the judgment in N.R. Parmar (Supra), it is necessary to observe that the Law is fairly well settled in a series of cases, that a person is disentitled to claim seniority from a date he was not borne in service. For example, in J.C. Patnaik (Supra) the Court considered the question whether the year in which the vacancy accrues can have any bearing for the purpose of determining the seniority irrespective of the fact when the person is actually recruited. The Court observed that there could be time lag between the year when the vacancy accrues and the year when the final recruitment is made. Referring to the word “recruited” occurring in the Orissa Service of Engineers Rules, 1941 the Supreme Court held in J.C. Patnaik (Supra) that person cannot be said to have been recruited to the service only on the basis of initiation of process of recruitment but he is borne in the post only when, formal appointment order is issued.

30. The above ratio in J.C. Patnaik (Supra) is followed by this Court in several subsequent cases. It would however be appropriate to make specific reference considering the seniority dispute in reference to the Arunachal Pradesh Rules which are pari materia to the MPS Rules, 1965, (vide (2007) 15 SCC 406 - Nani Sha & Ors. Vs. State of Arunachal Pradesh & Ors.). Having regard to the similar provisions, the Court approved the view that seniority is to be reckoned not from the date when vacancy arose but from the date on which the appointment is made to the post. The Court particularly held that retrospective seniority should not be granted from a day when an employee is not even borne in the cadre so as to adversely impact those who were validly appointed in the meantime.

31. We may also benefit by referring to the Judgment in State of Uttar Pradesh and others vs. Ashok Kumar Srivastava and Anr2. This judgment is significant since this is rendered after the N.R. Parmar (Supra) (2014) 14 SCC 720 decision. Here the Court approved the ratio in Pawan Pratap Singh and Ors. Vs. Reevan Singh & Ors.3, and

concurred with the view that seniority should not be reckoned retrospectively unless it is so expressly provided by the relevant service Rules. The Supreme Court held that seniority cannot be given for an employee who is yet to be borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime. The law so declared in *Ashok Kumar Srivastava (supra)* being the one appealing to us, is profitably extracted as follows:

24. The learned Senior Counsel for the appellants has drawn inspiration from the recent authority in Pawan Pratap Singh v. Reevan Singh where the Court after referring to earlier authorities in the field has culled out certain principles out of which the following being the relevant are produced below:

“45. (ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources.

Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

.....

45. (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.”

32. With the above understanding of the law on seniority, the provisions of the MPS Rules, 1965 and more specifically Rule 28(i), Rule 28 (iii) and Rule 16 (iii) will now bear consideration. For ready reference they are extracted: -

Rule 28(i) In the case of persons appointed on the result of competitive examination or by selection under clause (b) of sub-rule (1) of Rule 5, seniority in the Service shall be determined by the Order in which appointments are made to the service.

.....

Rule 28(iii) The relative seniority of direct recruits and promotees shall be determined according to rotation of vacancies between direct recruits and promotees as determined under Rule 5 for that year and the additional direct recruits selected against the carried forward vacancies of the previous year would be placed enbloc below the last promotees (or direct recruits as the case may be).

The seniority of the officer so appointed under sub-rule (3) of the Rule 16, shall be counted from the date, he/she is appointed to the Service.

.....

Rule 16(iii)

In the case of a person who had been appointed to a post which is subsequently declared as duty post he shall be deemed to have been appointed to the Service from the date of encadrement of the post in the MPS Schedule.

.....

33. As can be seen from above, the MPS Rules, 1965 never provided that seniority should be counted from the date of vacancy. For those covered by the MPS Rules 1965 the seniority for them will be reckoned only from the date of appointment and not from the stage when requisition for appointment was given.

34. In the above context, it is also necessary to refer to the relevant advertisement issued in 2005 for direct recruitment which allowed the aspirants to apply even if, their result in the qualification examination is awaited. Even more intriguing and significant is the relaxation that those proposing to appear in the qualifying examination are also allowed to respond to the advertisement. If such be the nature of the process initiated (in the year 2005) for making direct recruitment, we can easily visualize a situation where, in the event of granting seniority from the stage of commencing the process, a person when eventually appointed, would get seniority from a date even before obtaining the qualification, for holding the post.

35. The judgment in N.R. Parmar (Supra) is now to be considered in some detail as this is heavily relied by the appellants' counsel. At the outset it must however be cleared that the cited case had nothing to do with the MPS Rules, 1965 and that litigation related to the Income Tax Inspectors who were claiming benefits of various Central Government OM (dated 22.12.1959, 07.02.1986, 03.07.1986 and 03.03.2008). The judgment was rendered in respect of Central Government employees having their own Service Rules. The applicable Rules for the litigants in the present case however provide that the seniority in the service shall be determined by the order in which appointments are made to the service. Therefore, the concerned Memorandums referred to in N.R. Parmar (Supra) which deal with general principles for determination of seniority of persons in the Central Government service, should not according to us, have any overriding effect for the police officers serving in the State of Manipur.

36. After the judgment in N.R. Parmar (Supra) was delivered, the Union of India issued the Office Memorandum on 04.03.2014 defining the recruitment year to be the year of initiating the recruitment process against the vacancy year and that the rotation of quota, would continue to operate for determination of inter-se seniority between direct recruits and promotees. This Memo was not made applicable to the State of Manipur till the issuance of the OM dated 21.12.2017, adopting the OM dated 04.03.2014 prospectively with effect from 01.01.2018. Significantly, the said OM specifically provided that ".....appointments/promotions made before the issue of this OM will not be covered by this OM. The seniority already fixed as per existing rules followed earlier in the State prior to the issue of this OM may not be reopened." It was also specifically stated therein that "this OM will come into effect from 01.01.2018 with the publication in the Gazette....."

37. From above, it is not only apparent that the above OM was only to be given prospective effect from 1.1.2018 but it contains an express acknowledgement that this was not the position prior to the issuance of the OM and that a different Rule was followed earlier in the State. The conclusion is, therefore, inevitable that at least prior to 1.1.2018, direct recruits cannot claim that their seniority should be reckoned from the date of initiation of recruitment proceedings and not from the date of actual appointment.

38. When we carefully read the judgment in N. R. Parmar (Supra), it appears to us that the referred OM (dated 07.02.1986 and 03.07.1986) were not properly construed in the judgment. Contrary to the eventual finding, the said two OM 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 OM 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.

39. At this stage, we must also emphasize that the Court in N. R. Parmar (Supra) need not have observed that the selected candidate cannot be blamed for administrative delay and the gap between initiation of process and appointment. Such observation is fallacious in as much 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 (Supra) 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 *vs. Shankarsan Dash Vs. Union of India*⁴, where it was held even upon empanelment, an appointee does not acquire any right.

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. 5 and Pawan Pratap Singh & Ors. Vs. Reevan Singh & Ors.(Supra). 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.

41. As noted earlier, the Learned Single Judge based his judgment on two propositions but the Division Bench was of the view that result would be the same merely on the basis of one of the two propositions and, therefore, it was unnecessary to pronounce upon the other proposition. Such an approach cannot therefore be described as a conflict (as has been suggested), between the two judgments. Both Benches were absolutely consistent in their conclusion that promotees would have to be given seniority over direct recruits. It cannot therefore be argued that by some convoluted reasoning, it is possible to come to the conclusion that the orders passed by the two Courts would result in diametrically opposite situation namely, that direct recruits would have to be given seniority over promotees.

42. The Learned Single Judge in his Judgment interpreted the Office Memorandum (07.02.1986), as adopted by the State Government vide its OM dated 13.11.1987 to mean that direct recruits could be given seniority only from the date of appointment. The Judgment in N.R. Parmar (Supra) was not cited and the principle contained therein cannot therefore be said to have been intended to be applied by the Learned Judge.

43. That apart, the paragraph (14) of the judgment (7.7.2017) expressly refers to the earlier WP(C) No.235 of 2012 and the 18.02.2013 order passed therein. In that case, the State of Manipur filed counter affidavit categorically stating that, seniority of direct recruits would be counted from their date of appointment and not from the date of initiation of the recruitment process.

44. The Learned Single Judge in paragraph 14 of the judgment directed the State Government to prepare the seniority list after taking into account the observations made by the Court where the Court had clearly observed that the direct recruits cannot get seniority over and above the promotees and that the principle of dovetailing cannot be applied while determining the inter-se seniority between the appellants and the private respondents. This observation is undoubtedly a part of the Court's directions and while implementing this order, the Government could not have given seniority to the direct recruits over the promotees. By doing so, they have acted in violation of the Court Orders and not in conformity therewith.

45. It is now necessary to deal with Mr Patwalia's final contentions in reply, placing reliance on All India Judges Association & Ors. Vs. Union of India and Ors.⁶. He emphasizes the following passage in paragraph 29 of the Judgment:-

“.....Hardly if ever there has been a litigation amongst the members of the service after their recruitment as per the quotas, the seniority is fixed by the roster points and irrespective of the fact as to when a person is recruited.....”

46. The above would however refer to an incumbent whose roster points have been fixed after their recruitment as per the prescribed quotas. The cited judgment does not propose to say that seniority by roster points be fixed, ignoring the date, when the person is recruited. The judgment obviously was not considering a situation, where seniority is being fixed even before the incumbent is borne in service. In any case, having regard to the specification made in the MPS Rules, 1965, which squarely governs the litigants here, the ratio in the All India Judges Association' (Supra) would be of no assistance, for the appellants.

47. As earlier discussed, the Rule 28 of the MPS Rules, 1965 shows that seniority in the service shall be determined based on the date of appointment to the service. In particular Rule 28(i) of the MPS Rules, 1965 which is applicable to both promotees and direct recruits, provides that seniority shall be determined by the order in which the appointments are made to the service. If seniority under Rule 28(i) is to be determined based on the date of appointment, it cannot be said that for the purpose of Rule 28(iii), the seniority of direct recruits should be determined on the basis of the date of initiation of the recruitment process. The term “Recruitment Year” does not and cannot mean the year in which, the recruitment process is initiated or the year in which vacancy arises. The contrary declaration in N.R. Parmar² in our considered opinion, is not a correct view.

48. In view of the foregoing, let us now consider the Government order (29.06.2019) produced by the Manipur Advocate General in the Contempt Case. As it appears the seniority list published on 29.06.2019 could not be an independent exercise but its purpose should be to give effect to the judgments passed by the High Court. Since the judgment of the learned single Judge was affirmed by the Division Bench, the seniority list must be prepared in accordance with the High Court's direction. It is certainly not permissible to prepare a fresh seniority list as an independent exercise, without reference to the decisions of the Court. When we test the validity of the list (29.06.2019), there is no escape from the conclusion that the list ignores the decision of the single Judge as affirmed by the Division Bench. It is declared so accordingly.

49. In consequence, the appeals arising out of SLP (C)No.19565-67 of 2019 filed by the direct recruits are dismissed. On the same reasoning, the appeals arising out of SLP (C)No. 19568-69 of 2019, filed by the State of Manipur are not entertained and the same shall stand dismissed. With the above finding on the Contempt Case No.224 of 2018 and quashment of the 29.06.2019 proceeding produced in that case before the High Court, the appeals arising out of SLP (C)No. 17007 of 2019 filed by Ningam Siro against the High Court's order in the Contempt Case No.224/2018 is disposed of.

50. In view of the foregoing, the orders of the High Court in the Writ Petition and the Writ Appeal are upheld. The State of Manipur is accordingly directed to prepare a revised inter-se seniority list in the MPS Grade-II cadre in light of the above discussion and the High Court's Orders. This shall be done within 8 weeks from today. All consequential actions will follow from this judgment. It is ordered accordingly."

4. Therefore the cardinal issue is covered by the Hon'ble Apex Court Judgment. Therefore, we hold that the first seniority list of 2015 will now prevail and as far as the applicant is concerned, we will set aside the effect of the 2nd seniority list of 2018. Whether this setting aside is applicable to other persons, who may be in the list, have to be looked into by the respondents in relation to the Hon'ble Apex Court Judgment, as we are not very sure of the factual applicability of the Judgement to others as well. So we have not given any opinion on this in relation to others. But so far as the applicant is concerned, she will be now relegated to the earlier position as in 2015 seniority list and the benefits may flow accordingly. OA allowed to the limited extent.

5. At this point of time, learned counsel for the applicant seeks some time for the implementation of the order. This is a declaratory order and therefore, there is no question of implementation as we have placed the applicant on par with her position in 2015 seniority list. That means only that it takes effect from today, right now. There is no need for any time limited to be granted for this. OA allowed to the limited extent. No order as to costs.

(C.V. SANKAR)

(DR.K.B.SURESH)

MEMBER(A)

MEMBER(J)

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Annexures referred to by the Applicant in OA No.1507/2018

- Annexure A1 : Copy of UPSC advertisement No.11/2013.
- Annexure A2 : Copy of Offer of appointment dated 25.11.2014.
- Annexure A3 : Copy of Intimation letter dated 29.12.2014 reg. applicant's assumption of charge as SSO II.
- Annexure A4 : Copy of finalized Seniority Roll of SSO II in DGAQA notified on 26.11.2015
- Annexure A5 : Copy of impugned Seniority Roll of SSO II notified on 24.4.2018.
- Annexure A6 : Copy of CAT BG order dated 19.9.2017 in OA.971/2016
- Annexure A7 : Copy of Representation dated 16.2.2018 to the draft seniority roll notified on 23.1.2018.
- Annexure A8 : Copy of Representation dated 4.5.2018.
- Annexure A9 : Copy of R-2 communication dated 8.5.2018.
- Annexure A10 : Copy of DOPT OM dated 6.6.1978.
- Annexure A11 : Copy of DOPT OM dated 13.6.2000.

Annexures referred to by the Respondent No.4 in the Reply

Annexure R1 : Copy of DoPT OM dated 06.6.1978.
Annexure R2 : Copy of DoPT OM dated 03.7.1986.
Annexure R3 : Copy of DoPT OM dated 13.6.2000
Annexure R4 : Copy of DoPT OM dated 11.11.2010
Annexure R5 : Copy of letter dated 15.10.2012 issued by
Respondents for extension of joining time to R-4.
Annexure R6 : Copy of order dated 30.11.2012 of High Court of
Panjab & Harayana.

Annexures referred to by the Official Respondents

Annexure R1 : Copy of Communication dated 29.09.2019
Annexure R2 : Copy of Appointment letter.
Annexure R3 : Copy of Revised seniority list
Annexure A4 : Copy of OM dated 3.7.86.
Annexure R5 : Copy of Judgement in Civil Appeal Nos. 7515-
7515/2005.
