

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.2001/2019

This the 13th day of October, 2020

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

1. Smt. Kavita Sharma,
Group 'A' Assistant Drugs Controller (I)
Aged about 48 years,
W/o Sh. Rajneesh K. Sharma,
R/o BG-5/45-C, Paschim Vihar,
New Delhi
2. Somnath Basu,
Group 'A' Assistant Drugs Controller (I)
Aged about 57 years,
S/o Sh. Gobinda Basu
R/o 1013, Type – IV, R.K. Puram,
Sector – 12, New Delhi – 110022
3. Dr. Inderjeet Singh Hura,
Group 'A' Assistant Drugs Controller (I)
Aged about 50 years,
S/o Dilip Singh
R/o B4/130/2, Safdarjung Enclave, New Delhi
4. Jayant Gangakhedkar,
Group 'A' Assistant Drugs Controller (I)
Aged about 50 years,
S/o Sh. Bhaskar Gangakhedkar
R/o 305, old Minto Road Hostel, Minto Road, New Delhi
5. Sunil Kulshreshtha,
Group 'A' Assistant Drugs Controller (I)
Aged about 46 years,
S/o Sh. K.K. Kulshreshtha,
R/o H. No. 1436, Sec-3, Faridabad, Haryana.





6. Gaurav Kumar,
Group 'A' Assistant Drugs Controller (I)
Aged about 45 years,
S/o Sh. Jai Gopal
R/o RZ-43, Sai Baba Enclave,
Najafgarh, New Delhi. ...Applicants

(By Advocate: Sh. M.K. Bhardwaj)

VERSUS

1. Union of India, Through its Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi.
2. The Director General of Health Services,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi.
3. The Drugs Controller General (India),
Central Drugs Standard Control Organisation (HQ),
Directorate General of Health Services,
FDA Bhawan, Kotla Road, New Delhi – 110002.
4. Sh. Santosh Vitthalrao Indraksha,
Serving as Assistant Drugs Controller,
Central Drugs Standard Control Organisation (HQ)
Directorate General of Health Services,
FDA Bhawan, Kotla Road, New Delhi – 110002.
5. Sh. Dhananjay Keshavrao Sable,
Serving as Assistant Drugs Controller,
Central Drugs Standard Control Organisation (HQ)
Directorate General of Health Services,
FDA Bhawan, Kotla Road, New Delhi – 110002.
6. Ms. Rikta Saha,
Serving as Assistant Drugs Controller,
Central Drugs Standard Control Organisation (HQ)
Directorate General of Health Services,
FDA Bhawan, Kotla Road, New Delhi – 110002.



7. Sh. Vijay Vitthalrao Chandankar,
Serving as Assistant Drugs Controller,
Central Drugs Standard Control Organisation (HQ)
Directorate General of Health Services,
FDA Bhawan, Kotla Road, New Delhi – 110002.
8. Dr. K. M. Srinivasan,
Serving as Assistant Drugs Controller,
Central Drugs Standard Control Organisation (HQ)
Directorate General of Health Services,
FDA Bhawan, Kotla Road, New Delhi – 110002.
9. Dr. Ajay Sachan,
Serving as Assistant Drugs Controller,
Central Drugs Standard Control Organisation (HQ)
(North Zone)
CGO Complex, Raj Nagar, Ghaziabad, U.P.
10. Sh. Meshram Pramod Anandrao,
Serving as Assistant Drugs Controller,
Central Drugs Standard Control Organisation (HQ)
Directorate General of Health Services,
FDA Bhawan, Kotla Road, New Delhi – 110002.
11. Sh. Kishore Kumar Dondilkar,
Serving as Assistant Drugs Controller,
Central Drugs Standard Control Organisation (HQ)
Directorate General of Health Services,
FDA Bhawan, Kotla Road, New Delhi – 110002.
12. Sh. Rajshekhar,
Serving as Assistant Drugs Controller,
Central Drugs Standard Control Organisation (HQ)
(Sub-Zonal Office, Bangalore)
Bangalore, Karnataka. ...Respondents

(By Advocates: Sh.Rajeev Kumar and Sh.Birendra Kumar
Choudhary)

ORDER (ORAL)**Justice L.Narasimha Reddy, Chairman :**

The applicants joined the service of Ministry of Health and Family Welfare in different posts. By the year 2015 they were holding the posts of Technical Officers. Next promotion is to the post of Assistant Drug Controller (ADC). They were promoted to the post of ADC on 01.05.2015. Respondents 4 to 12 were appointed to the post of ADC by way of direct recruitment between 2016 and 2018. A provisional seniority list was published on 08.04.2016. The respondents 4 to 12 were placed above the applicants. They submitted a representation stating that the recruitment rules provide for appointment to the post of ADC 100% by promotion and the direct recruitment is only contingent upon the non-availability of candidates. They pleaded that there was absolutely no basis for placing the respondents 4 to 12 above them. Through an order dated 25.06.2019 the competent authority rejected the representation. This OA is filed challenging the order dated 25.06.2019.

2. The applicants contend that once the appointment to the post of ADC under the recruitment rules is 100% by promotion and the direct recruitment is only contingent upon the



non-availability of qualified candidates, the question of the placing any direct recruitee above the promotee appointed earlier to them does not arise. Reliance is placed upon the judgement of Hon'ble Supreme Court in Megha Chandra's case and the judgement of this Tribunal in OA.1719/2012.

3. On behalf of respondents 1 to 3 on the one hand and 4 to 12 on the other hand, separate counter affidavits are filed. According to them, the respondents 4 to 12 were appointed against the vacancies referable to the year 2014 i.e. one year earlier, the date on which the applicants were promoted and thereby the applicants were treated as juniors to them. Various other contentions raised by the applicant are denied.

4. We heard Sh.M.K.Bhardwaj, learned counsel for the applicant and Sh.Rajeev Kumar and Sh.Birendra Kumar Choudhary, learned counsel for the respondents.

5. The dates of promotion of the applicants on the one hand and the respondents 4 to 12 on the other hand, to the post of ADC, are not in dispute. The applicants were promoted on 01.05.2015, whereas the respondents 4 to 12 were appointed between 2016 and 2018. In the provisional seniority list dated 08.04.2016, respondents 4 to 12 were shown as seniors to the

applicants. The objection raised by the applicants was overruled.

Therefore, the only question that arise for consideration is as to whether respondents 4 to 12 are entitled to be treated as seniors to the applicants.

6. In the context of fixing the inter se seniority between the direct recruits on the one hand and the promotees on the other hand, the purport of the recruitment rules becomes relevant. Normally such disputes arise only when the RRs provide for appointment to a particular post, partly by direct recruitment and partly by promotion. In the instant case the rule provides for 100% by promotion. The occasion to take recourse to direct recruitment would arise only if the qualified candidates for promotion are not available. Under these circumstances, the matter of fixing the inter se seniority of the persons appointed as ADC by whatever method, would not present any problem at all. One has to simply go by the date of appointment be it through promotion, or by direct recruitment. The recruitment rules for the post of ADC read as under :

***Assistant Drugs Controller (India)], Recruitment Rules,
2011 vide GSR 216 dated 15-03-2011 issued by
Ministry of Health & FW***



Column 11:

100% by promotion failing which by deputation and failing both by direct recruitment.



7. There is no scope for arguing that for promotees on the one hand and the direct recruits on the other hand need to be considered for any particular recruitment year. Invariably the promotees must have precedence and the recourse to direct recruitment would be only contingent upon non-availability of candidates for promotion. Thereby, the candidates so appointed have to take their place in the seniority list, depending on the date of their appointment.

8. Recently in **OA.1719/2012 (Purnojyoti Mukherjee vs UOI and others)** and batch this Bench of the Tribunal dealt with the very issue. The various judgements rendered by the Hon'ble Supreme Court on the subject were taken into account. Paragraphs 18 to 21 thereof are relevant for this purpose. They read as under :

*18. Recently, the Hon'ble Supreme Court dealt with this very question in detail in **Ganga Vishan Gujrati & Ors. vs. State of Rajasthan & Ors.**, Civil Appeal No. 6007/2019 dated 21.08.2019. Para 45 of the judgment of the Hon'ble Supreme Court in **Pawan Pratap Singh vs. Reeven Singh** (2011)3 SCC 267, was taken note of and it reads as under:-*

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

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

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

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

It was also mentioned that the view taken by the Hon^{ble} Supreme Court in the judgment of Pawan Pratap Singh was reaffirmed by a Bench of three judges in **P. Sudhakar Rao v. U. Govinda Rao**, 2013)5 SCC 693.

19. The concluding para of the judgment of the Hon^{ble} Supreme in **Ganga Vishan Gujrati** reads as under:-

“37 For the above reasons, we are of the view that the Division Bench of the High Court was justified in coming to the conclusion, though for the reasons which we have indicated, that the claim for seniority with reference to the date of the accrual of the vacancy will not be maintainable merely on the ground that no competitive examination was held in the years in which the vacancies had arisen. The view taken by the Division Bench of the Rajasthan High Court is in accord with the principles of law enunciated in



the decisions of this Court and consistent with the statutory rules as they held the field at the material time.

38. For the above reasons, we find no merit in the appeals. The appeals are accordingly dismissed. There shall be no order as to costs. Pending application(s), if any, shall stand disposed of.”

20. The ratio of the above judgment squarely applies to the facts of the present case. The respondents have appointed the LDCE candidates against the posts of earlier years and as a result, they were deemed to have been promoted, much earlier to the date on which they cleared the LDCE. That is contrary to law laid down by the Hon[”] ble Supreme Court.

21. Hence, the OA is allowed, and the orders impugned therein are set aside. The respondents 2 and 3 shall prepare the seniority list afresh in such a way that an SO promoted through LDCE is not treated as having been promoted with effect from any date, earlier to one on which he was actually promoted. If any promotions to higher posts have taken place in accordance with the impugned seniority list, the same shall be revisited. The exercise shall, however, be confined to the re-fixation of seniority and shall not lead to reversion of the officers who have already been promoted. The exercise in this behalf shall be completed within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

9. We are of the view that same situation had arisen in this case also. Though an effort is made by the learned counsel for the respondents, that the Hon[”]ble Supreme Court in its judgement in Megha Chandra’s case, protected the interest of the employees covered by the judgement, in N.R.Paramar’s case, such a contingency does not arise in view of the fact that the recruitment rule extracted above does not provide for allocation between promotion and direct recruitment. Once there is no





provision for direct recruitment straight away, the question of considering the respondents 4 to 12 as seniors to those appointed/promoted earlier to them does not arise.

10. The OA is accordingly allowed. The impugned order is set aside. The seniority of the applicants on the one hand and the respondents 4 to 12 on the other hand shall be determined strictly on the basis of their date of appointment/promotion as the case may be. There shall be no order as to costs.

(Aradhana Johri)
Member (Admn.)

(Justice L.Narasimha Reddy)
Chairman

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