

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD**



OA/020/00466/2020

HYDERABAD, this the 2nd day of September, 2020.

THE HON'BLE MR.ASHISH KALIA : JUDICIAL MEMBER

THE HON'BLE MR.B.V.SUDHAKAR : ADMINISTRATIVE MEMBER

1.J.Sreenivasulu S/o J.Chalapathaiah (late),
Age 57 years, Occ : Sr.Supdt. of Post Offices,
O/o Vijayawada Division, Krishna District,
Vijayawada-520 001.

2. D.Ramanaiah S/o Yanadaiah (late)(Group.B),
Age 56 years, Occ : Sr.Supdt. of Post Offices,
O/o Bhimavaram Division, Bhimavaram,
West Godavari District-534 201.

3. J.Pandari S/o Muthaiah (late),
Age 57 years, Occ : Sr.Supdt. of Post Offices,
O/o Peddapalli Division, Karimnagar District,
Telangana State.

4. K.Jayaraju S/o Raja Ratnam,
Age 56 years, Occ : Chief Postmaster,
O/o Hyderabad GPO., Hyderabad-500 001.

5. K. Ramesh S/o K. Nageswara Rao,
Age 56 years, Occ : Assistant Director (Admin.),
O/o Chief Postmaster General,
A.P.Circle Office, Vijayawada-520 010.

6. A.Kantha Rao S/o A.Krishna Murthy,
Age 57 years, Occ : Supdt. Of Post Offices,
O/o Parvathipuram Division, Parvathipura,
Srikakulam Division, A.P – 535 501.



7. Sk.Shabbir S/o Sk.Subhani,
Age 57 yrs, Occ : Sr.Suptd. of Post Offices,
O/o South East Division, Hyderabad-520 002.
8. P.V.Ramana Reddy S/o P.Venka Reddy (late),
Age 57 years, Occ : Sr.Postmaster, Secunderabad H.O.

...Applicants

(By Advocate : Mr.N.Vijay)

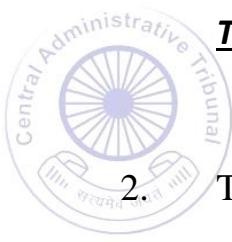
Vs.

1. Union of India, Ministry of Communications and IT,
Department of Post, DAK Bhavan, New Delhi,
Represented by its Secretary.
2. Asst. Director General (SPG), Ministry of Communications and IT,
Department of Post, DAK Bhavan, New Delhi,
3. The Chief Post Master General,
A. P. Circle, Krishna Lanka, Vijayawada.
3. The Chief Post Master General,
Telangana State, G.P.O. Hyderabad.

....Respondents

(By Advocate : Mrs.K.Rajitha, Sr.CGSC)

Oral Order
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)



Through Video Conferencing

2. The OA is filed objecting to the alterations made in the finalized seniority list dated 16.9.2014 of Postal Superintendents in the Group 'B' cadre.

3. Applicants were promoted to the Group B cadre in 2013 against 2012 vacancies. Final seniority list in Group B cadre was issued on 16.9.2014 and based on the same, further promotions to Group 'A' cadre were effected. Respondents revised the finalised seniority list by publishing a draft seniority list on 1.4.2017 based on the judgment of the Hon'ble Supreme Court in N.R.Parmar case. Applicants objecting to the same filed OA 205/2020 citing the judgment of the Hon'ble Supreme Court in K. Meghachandra Singh & ors v. Ningam Siro & Ors, dt. 19.11.2019 and the said OA was disposed directing respondents to dispose of the representations made. Respondents complied with the direction by rejecting the representations without considering the judgment cited and by reaffirming that the revised draft seniority list was issued based on the instructions of DOPT in OM dated 3.7.1986 and as per Recruitment Rules. Aggrieved, OA has been filed.

4. The contentions of the applicants are that the DOPT OM dated 3.7.1986 has been wrongly interpreted and applied to the case of the applicants. K. Meghachandra Singh judgment squarely applies to the case of the applicants. The officials promoted to Group B cadre from the 75%

and 25 % quota are both promotees and hence, N. Parmar decision does not come into play.



5. Respondents in the reply statement have submitted that the applicants were promoted to group B cadre against 75% quota for the vacancy year 2012-2013 excepting Sri D. Ramanaiah who was promoted against the same quota for the vacancy year 2010. Rest of the vacancies against 25% quota for the vacancy years 2010 & 2012-2013 were filled up by conducting Limited Departmental Examinations (for short “**LDCE**”) and selected candidates were promoted and posted on 5.8.2011 & 6.9.2018 respectively. The seniority list of Group B officers was updated up to 30.4.2013 and circulated on 16.9.2014, which does not include officers appointed through LDCE for the vacancy years cited. Hence, revised draft seniority lists were issued including the LDCE officers on 15.3.2019/4.11.2019 in tune with the DOPT OM dated 3.7.1986 by considering the rotation principle between direct recruits and promotees in the ratio of 3:1 and in accordance with the recruitment rules for Group B officers. The action of the respondents is confirmed by the subsequent clarification given by DOPT vide I.D. Note dated 13.9.2019. Regarding K. Meghachandra Singh judgment dated 19.11.2019, it is under examination by the Ministry of Law. Besides, the said judgment is prospective and hence, is of no relevance to the case of the applicants.

6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is in regard to revising the seniority of the applicants promoted under 75% quota to Group B cadre, which was finalised on 16.9.2014. Respondents assert that the cited seniority list does not include the officers promoted under 25% quota by LDCE for the same vacancy years and hence, revised draft seniority lists were issued on 15.3.19/4.11.2019 in accordance with DOPT memo dated 3.7.1986 and relevant recruitment rules.

II. The relevant provisions of the Recruitment Rules of Group B officers amended on 29.6.1994 (Annexure R-1), are reproduced hereunder:

“4. In the schedule of the said rules in column 12 for the existing entries the following entries shall be substituted namely:-

By promotion

75% of the total posts shall be filled by promotion from amongst Inspectors of Post Offices and Inspectors of Railway Mail Service (Pay scale Rs.1400-2300/-) with 8 years regular service in the grade.

Promotion by examination:

(i) 19% of the total posts shall be filled on the basis of a departmental competitive examination from amongst Inspectors of Post Offices and Inspectors of Railway Mail Service (Pay scale Rs.1400-2300/-) with five years regular service in the grade.

(ii) 6% of the total posts shall be filled on the basis of the same departmental examination from amongst clerical line officials working in Post Offices/ Divisional Offices with 5 years regular service in the Lower Selection Grade and above.”

As can be seen from the above provisions, they speak of promotions to 75% of posts from IPO/IRM (Inspector Post Offices/Inspector Railway Mail Service) cadre with 8 years regular service, 19 % by LDCE from IPO/IRM with 5 years regular service and 6% from the Clerical cadre with 5 years regular service in Lower Selection Grade. The promotions have been differentiated by the number of years of regular service rendered and to encourage youngsters with lesser number of years of regular service to

get into the Group B cadre through LDCE. Nowhere it is stated that the promotions are by direct recruitment through LDCE to the Group B cadre for the 19% & 6% quota referred to in the recruitment rules. Hence, the respondents differentiating the applicants as promotees under 75 % quota and the LDCE officers under 25% quota as direct recruits is against the recruitment rules. Both the category of officers are promotees. Applicants were promoted to the Group B cadre prior to the LDCE officers. Thus, according to the General principles of seniority, applicants rank senior to the LDCE officers.

III. To top it, respondents have themselves agreed that those promoted by the mode of LDCE examination are to be treated as promotees as per para 5 of their letter dated 14.8.2020, which is extracted hereunder:

“5. Further, it is clarified that Limited Departmental Competitive Examination (LDCE) is not an open examination but is limited to the employees in the feeder grade (s) which is (are) in lower level of pay than the post for which selection is made through LDCE. Accordingly, appointment to a post by selecting candidate through LDCE is to be treated as promotion not a direct recruitment. Therefore, it is imperative that such type of cases need to be contested strongly.”

This clinches the issue in favour of the applicants. However, we proceed to address other issues raised to arrive at a definite final conclusion.

IV. One of the issue of relevance is that respondents have admitted that they have issued only a draft seniority list on 15.3.19 and the latest being 4.11.2019. Draft seniority list is subject to change and any promotion has to be effected only on the basis of a final seniority list. If at all respondents grant promotion based on the draft seniority list in order to meet any contingencies then such promotions have to be construed as only provisional and not regular.

V. Even presuming, though not admitted, as claimed by the respondents in the reply, if the LDCE officers were to be assumed to be direct recruits, their further promotion to Group 'A' cadre has to be decided based on the final seniority list, which is yet to be issued. K. Meghachandra Singh judgment was delivered by the Hon'ble Apex Court on 19.11.2019 and hence, any final seniority list issued after the referred date of judgment will have to be in congruence with the law laid therein, which makes it lucid that seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre. The LDCE officers were promoted subsequent to the applicants getting promoted to the Group B cadre and on applying K. Meghachandra Singh judgment applicants have to be placed above LDCE officers, under reference, in the seniority list. Hence, the contention that K. Meghachandra Singh is not applicable, is incorrect. However, albeit repetitive, we make it amply clear that the officers promoted both under 75% and 25% belong to the same class of promotees in view of the recruitment rules governing Group B cadre.

VI. Having made it clear that officers promoted under 75% and 25% quota are promotees, the DOPT OM dated 3.7.1986 would become irrelevant because it speaks of fixing seniority between direct recruits and promotees. Nevertheless, the relevant portion of the DOPT OM extracted hereunder, is also in favour of the applicants.

"2.4.1 The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules.

2.4.2. If adequate number of direct recruits do not become available in any particular year, rotation of quotas for the purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees.



In other words, to the extent direct recruits are not available the promotees will be bunched together at the bottom of the seniority list below the last position upto which it is possible to determine seniority, on the basis of rotation of quotas with reference to the actual number of direct recruits who become available. The unfilled direct recruitment quota vacancies would, however, be carried forwarded and added to the corresponding direct recruitment vacancies of the next year (and to subsequent years where necessary) for taking action for direct recruitment for the total number according to the usual practice. Thereafter, in that year while seniority will be determined between direct recruits and promotees, to the extent of the number of vacancies for direct recruits and promotees as determined according to the quota for that year, the additional, direct recruits selected against the carried forward vacancies of the previous year would be placed en-bloc below the last promote (or direct recruit as the case may be), in the seniority list based on the rotation of vacancies for that year. The same principle holds good for determining seniority in the event of carry forward, if any, of direct recruitment or promotion quota vacancies (as the case may be) in the subsequent year.

ILLUSTRATION: Where the Recruitment Rules provide 50% of the vacancies of a grade to be filled by promotion and the remaining 50% by direct recruitment, and assuming there are ten vacancies in the grade arising in each of the year 1986 and 1987 and that two vacancies intended for direct recruitment remain unfilled during 1986 and they could be filled during 1987, the seniority position of the promotees and direct recruits of these two years will be as under:

	1986		1987
1	P1	9	P1
2	D1	10	D1
3	P2	11	P2
4	D2	12	D2
5	P3	13	P3
6	D3	14	D3
7	P4	15	P4
8	P5	16	D4
		17	P5
		18	D5
		19	D6
		20	D7"

As can be seen from the above paragraphs the direct recruit vacancies which are unfilled are to be carried over to the subsequent year of recruitment and in such an eventuality those recruited in the subsequent year for the carried over vacancies will rank junior to those recruited in the year of recruitment. The LDCE officers have been promoted to Group B cadre later to the applicants and hence applying the norm laid which was well explained by an example, the LDCE officers will rank junior to the applicants. Nevertheless, we reiterate that *prima facie* the DOPT memo is

not applicable to the case on hand since the assumption that LDCE officers are direct recruits is misplaced.



VII. In addition settled seniority cannot be unsettled as per Hon'ble Supreme Court judgment in ***Shiba Shankar Mohapatra v. State of Orissa, (2010) 12 SCC 471, at page 483 as under:***

30. Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained.

Applicants seniority was fixed in 2014 and the respondents unsettling the settled seniority by issue of draft seniority list on 15.3.2019/4.11.2019 is thus impermissible since it is against the legal principle laid down.

VIII. Moreover, respondents have violated the recruitment rules as expounded above. Hon'ble Apex Court has taken a serious view of violation of rules and made a categorical observation in Seighal's case (1992) (1) supp 1 SCC 304 that deviation in implementation of rules should be curbed and snubbed as under.

“Wanton or deliberate deviation in implementation of rules should be curbed and snubbed.”

The decision of the respondents violating the recruitment rule and revising the settled seniority list of 2014 by issuing the revised draft seniority list on 15.3.2019/4.11.2019 has to be curbed and snubbed in accordance with the above legal axim. Particularly, in the context of the respondents clarifying that those promoted by LDCE are promotees vide their letter dated 14.8.2020.

IX. Finally, a bird's eye view of the entire issue would make it explicit that it is the respondents who made the mistake of revising the settled seniority of 2014, which is against rules and law, as was brought out in the paras supra. The mistake of the respondents should not make the applicants suffer as was observed by the Hon'ble Apex Court in the judgments referred to hereunder:

- (i) The Apex Court in a recent case decided on 14.12.2007 (***Union of India vs. Sadhana Khanna***, C.A. No. 8208/01) held that the mistake of the department cannot recoil on employees.
- (ii) In yet another recent case of ***M.V. Thimmaiah vs. UPSC***, C.A. No. 5883-5991 of 2007 decided on 13.12.2007, it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer.
- (iii) It has been held in the case of ***Nirmal Chandra Bhattacharjee v. Union of India, 1991 Supp (2) SCC 363*** wherein the Apex Court has held “The mistake or delay on the part of the department should not be permitted to recoil on the appellants.”

The mistake of the respondents by improperly revising the seniority list of 2014 should not be at the cost of the applicant's promotion to Group A cadre. Ld. Counsel submitted that some of the applicants are due for retirement shortly. Hence he prayed for an early conduct of DPC to consider promoting the applicants to Junior Time Scale in Group 'A' cadre. In regard to the frequency of the conduct of DPC it has been emphasized that the DPC should meet periodically as per DOPT memo No. 28034/6/86-Estt(D) dated 17-11-86, in order to ensure that the promotions of those eligible are not delayed and officers are not put to financial loss and future

promotions are not adversely affected in the process. The instructions are reproduced hereunder to drive home the point that the respondents need to conduct DPC in time so that some of the applicants who are on verge of retirement, if eligible, would get promoted.



"9. Frequency at which DPC should meet 9.1 The DPC should be convened at regular annual intervals to draw panels which could be utilized for making promotion against the vacancies occurring during the course of a year. It has been observed that Ministries/Departments do not convene meetings of the DPCs annually for various reasons, even though eligible officers of the lower grade were available and the vacancies in the higher grade were also available for their promotion. This is often due to non-finalisation of the seniority list of officers of the lower grade which forms the field of consideration. Another reason to justify delay in holding DPC meeting is that Recruitment Rules for the post are being reviewed or amended. Amendment to the Recruitment Rules can normally have only prospective application and as such the existing Recruitment Rules would continue to be in force till the new Rules come into force. The Supreme Court has also ruled that vacancies should be filled according to the Rules in force when the vacancies arose. The DPCs should therefore be convened in time and the panel of officers finalised in accordance with the existing Recruitment Rules.

Sometimes, meetings of the DPC are also not convened annually under the impression that a panel, prepared by a DPC ailing "selection" posts, could be kept operative for a period of one year and six months and that, therefore, action to convene the next meeting of the Departmental Promotion Committee could be initiated only after the expiry of that period. As delay in convening the DPC meetings results not only in financial loss to the concerned officers due to delay in their promotion to the higher grade, but also affects them adversely in their future career, in as much as their promotion to the next higher grade is also delayed, it is necessary that the DPC meetings should be convened at regular intervals as indicated above. The requirement of convening annual meetings of the DPC should be dispensed with only after a certificate has been issued by the appointing authority that there are no vacancies to be filled by promotion or no officers are due for confirmation during the year in question."

X. Therefore, in view of the above, viewed from any angle, the action of the respondents is against rules and law. Hence respondents' decision to revise the seniority list of 2014 has to be construed to be against rules, arbitrary and illegal. The revised draft senior lists issued on 15.3.2019/4.11.2019 are set aside. The OA fully succeeds.

Consequently, respondents are directed to consider as under:



- i. Issue the final seniority list by protecting the seniority of the applicants as was fixed in the seniority list published on 16.9.2014 in Group B cadre.
- ii. After issue of the final seniority list, respondents to conduct DPC to promote those eligible to the Junior Time Scale in Group 'A' cadre as per relevant rules and regulations of the respondents organisation as well as in accordance with law.
- iii. Time calendared to implement the judgment is 3 months from the date of receipt of this order.

With the above direction, the OA is allowed, with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

VI/evr