

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/01091/2019 with MA No. 366/2020

HYDERABAD, this the 8th day of October, 2020



**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**

1. Mr.G.V.Prasad S/o G.Visweswera Rao,
Aged about 49 years,
Working as Assistant Superintendent,
Regional Passport Office, Vijayawada,
R/o 20-3/2-20, Vijayawada-520 003.
2. Mr.G.Santhosh Kumar
S/o Sayyaji, Aged about 45 years,
Working as Assistant Superintendent,
Regional Passport Office, Hyderabad,
8-2-215 to 219, Adj. to Prashant Theatre,
Kummaraguda, Secunderabad.
3. Mrs.Anitha S., Aged about 48 years,
Working as Assistant Superintendent,
Regional Passport Office, Hyderabad,
8-2-215 to 219, Adj. to Prashant Theatre,
Kummaraguda, Secunderabad.Applicants

(By Advocate : Mr. K. Sudhaker Reddy)

Vs.

1. Union of India, Rep by Secretary,
Ministry of External Affairs, Patiala House Annexe,
Tilak Marg, New Delhi.
2. The Joint Secretary (PSP) & CPO,
Ministry of External Affairs, PSP Division,
Patiala House Annexe, Tilak Marg, New Delhi.
3. Ms. Rajni Bhuddi,
Working as Assistant Superintendent,
Regional Passport Office, New Delhi.
4. Mr. Dilip Kumar,
Working as Assistant Superintendent,
Regional Passport Office, Patna.Respondents

(By Advocate: Mr.R.V.Mallikarjuna Rao, Sr. PC for CG)

ORAL ORDER
(As per Hon'ble Mr. B.V.Sudhakar, Administrative Member)

Through Video Conferencing:



2. The applicants filed the OA challenging the impugned order dt. 28.11.2019 issued by the 2nd respondent as arbitrary and in clear violation of the judgment of the Hon'ble Supreme Court dt. 19.11.2019 rendered in K. Meghachandra Singh & ors. v. Ningam Siro & ors in Civil Appeal No. 8833-8835 of 2019.

3. Brief facts of the case are that the 1st applicant is working as Assistant Superintendent, Regional Passport Office, Vijayawada and the applicants 2 & 3 are working as Assistant Superintendents, Regional Passport Office, Secunderabad. Their grievance is that they are placed below the Direct Recruits and LDCE Promotees in the impugned seniority list in clear violation of the Apex Court judgment in K. Meghachandra Singh v. Ningam Siro & Ors dt. 19.11.2019. Respondents on 22.04.2016 issued seniority list of Assistant Superintendents as on 01.04.2016 based on the date of joining and further directed the officers concerned to submit representations within 30 days and it was made clear that, no representations will be entertained thereafter. Again, the respondents issued another seniority list of Superintendents as on 01.04.2017 vide OM dt.09.02.2018 based on the date of joining, seeking objections, if any, within 30 days. In the said seniority list, the applicants were shown at Sl. Nos. 46, 51 and 59 respectively. In both the seniority lists, the seniority of Assistant Superintendents was finalized in the year 2018. In the impugned

seniority list, the applicants have been pushed down to Serial Nos. 160, 164 and 172 respectively. The applicants claim that the seniority finalized in the seniority list referred to should be taken for the purpose of consideration for promotion to the post of Superintendents. The judgment of the Hon'ble Apex Court in Meghachandra Singh has made it clear that the seniority which has been settled should not be unsettled. Thus, the seniority list issued in respect of Assistant Superintendents in the years 2016 & 2018 are to be reckoned as final. The impugned seniority list dt. 28.11.2019, which was issued after the Hon'ble Apex Court judgment cited dt. 19.11.2019 in Meghachandra Singh, by following the DOPT OM dt. 04.03.2014, which was issued in compliance of the norms laid down in the N.R. Parmar's case, in which it was clarified that the "initiation of recruitment process against a vacancy year would be the date of sending the requisition for filling up of vacancies to the recruiting agency in the case of direct recruitee", which is now overruled by the Apex Court vide judgment dt. 19.11.2019 in the case of Meghachandra Singh Case, by observing that "the decision in NR Parmar is overruled and 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 NR Parmar in our considered opinion, is not a correct view." After the Hon'ble Supreme Court Judgment in Meghachandra Singh delivered on 19.11.2019, the impugned seniority list was issued on 28.11.2019 which is void ab initio. Therefore, the earlier seniority list of Assistant Superintendent as on 01.04.2017 issued vide letter dt. 09.02.2018 comes into force and the same has to be taken for the purpose of consideration of the applicants for



promotion to the post of Superintendent. As the respondents have not followed the same, the applicants, being aggrieved, filed the OA.

4. The contentions of the applicants are that the in the impugned seniority list dt. 28.11.2019, the applicants are placed below the Direct Recruits and LDCE promotes in clear violation of the Apex Court judgment in Meghachandra Singh. The respondents vide OM dt.22.04.2016 issued the seniority list of Assistant Superintendent as on 01.04.2016 based on the date of joining. Thereafter, the Ministry once again issued seniority list of Assistant Superintendents as on 01.04.2017 vide OM dt. 09.02.2018 based on the date of joining and in both the above OMs, seniority of the Assistant Superintendents was finalized in the year 2018 and it alone should be taken into consideration for the purpose of promotion to the post of Superintendent. As per the above circular, all the promotes who have been promoted as Assistant Superintendents on 22.05.2015 have to be treated as seniors than the promotees who have qualified LDCE Examination on 09.10.2015 and promoted as Assistant Superintendents on 12.10.2015. Aggrieved by the above draft seniority list, applicants submitted representation on 21.08.2019 but the Ministry has rejected the same on 21.11.2019. As per the latest judgment of the Apex Court dt. 19.11.2019, issues which were settled should not be disturbed. Respondents have already issued the seniority list of Assistant Superintendents in the years 2016 and 2018 after calling objections from the Direct Recruits and none of them made any objections. The impugned seniority list dt. 28.11.2019 is invalid. Thus, the earlier seniority list of Assistant Superintendents as on 01.04.2017 issued vide letter dt. 09.02.2018 comes into force and the same

has to be taken for the purpose of considering the applicants for promotion to the post of Superintendents. The respondents are likely to conduct DPC for promotion to the post of Superintendent shortly. The applicants being senior are entitled to be considered for promotion to the said post as per the seniority list of 2018.



5. The respondents in their reply statement state that draft seniority list of Assistant Superintendents working in the Central Passport Organization as on 01.01.2019 was circulated vide OM dt. 07.08.2019 and the same was prepared based on the DOPT OM dt. 11.11.2010. After issuance of the draft seniority list, a number of representations were received for correction/rectification in the seniority list. Thereafter, the seniority list of the Assistant Superintendents was finalized and circulated on 28.11.2019. In fact, when the earlier seniority list dt. 01.04.2017 was issued, many representations were received from Direct Recruit Assistant Superintendents recruited through Staff Selection Commission (Combined Graduate Level-2014) claiming seniority over Assistant Superintendents promoted in May 2015 from the feeder cadre and through Limited Departmental Competitive Examination held in August 2015. The matter was thus referred to the DOPT for their advise. Accordingly, a draft seniority list as on 01.01.2019 was prepared based on the DOPT's "Instructions and Guidelines on Seniority" issued vide OM dt. 11.11.2020 and 04.03.2014 following the methodology prescribed for fixing the seniority, draft seniority of Assistant Superintendent as on 01.01.2019 was issued keeping in view the inter se seniority between the Assistant Superintendent recruited to the SSC CGL-2014 and LDCE 2015. The

process of conducting LDCE was started in the year 2014 i.e. immediately after revision of RRs notified vide GSR 165(E) dt. 04.03.2014. Date of joining is never the base of fixing inter se seniority in Central Passport Organization, Ministry of External Affairs. It is fixed based on the guidelines issued by the DOPT from time to time. The Recruitment Rules only indicate the mode of recruitment.



The respondents have filed MA 366/2020 for vacating the stay granted by the Tribunal on 19.12.2019. We have gone through the contents of the MA.

6. Heard both the counsel and perused the pleadings on record.
7. I. The main issue under dispute is that the seniority of the applicants, which was already settled should not be disturbed is the contention of the applicants. The respondents claim that while fixing the seniority of the Assistant Superintendents in the year 2016 and 2018 many objections were received. In this context, it is to be observed that the Hon'ble Supreme Court in Meghachandra Singh case delivered on 19.11.2019 has observed that the seniority of an employee who is a direct recruit shall be reckoned from the date of his being born in the cadre of the organization. Further, it was also observed in the said judgment that the seniority fixed earlier to the judgment shall not be unsettled. Applicants are only praying that the seniority which was fixed in 2016 & 2017 be adopted for promotion to the next higher cadre. The law applicable, to the applicants in respect of fixing the seniority in the cadre of Asst. Supdt., at the relevant point of time shall be made applicable; following the well laid down principle that settled seniority is not unsettled.

II. Learned counsel for the respondents submitted that the number of vacancies in Superintendent cadre is more than the number of candidates that are available for promotion. Hence, they be permitted to effect promotions first and thereafter, allow them to revisit the issue of seniority in view of the heavy work load. The Ld. Applicant Counsel submitted that he has no objections for the promotions to be effected but the seniority as claimed be protected. Though we understand that the respondents would like to effect promotions at the earliest so that the work does not suffer, however, they cannot do what is not permitted under law. Besides, in granting promotions, seniority plays a cardinal role and without finalizing seniority effecting promotions would go against the basic tenets of service law. Hence, they are directed to ensure that the law, which is applicable to the applicants, as explained above, in respect of seniority shall be applied and the seniority in Asst. Superintendent cadre be finalized. Thereafter, respondents can go for effecting promotions. To facilitate the same, interim order issued on 19.12.2019 is vacated. The time line fixed to comply with the direction is 3 months from the date of the receipt of the order.

III. With the above directions, the OA is disposed. MA No.366/2020 for vacating the interim order is accordingly allowed. No order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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