

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD



OA/021/01132/2019 & MA/021/234/2020

HYDERABAD, this the 4th day of September, 2020.

THE HON'BLE MR.ASHISH KALIA : JUDICIAL MEMBER

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

1. P.Arun Kumar S/o P.Durga Rao,
Aged 27 years, Occ : Upper Division Clerk,
O/o The Regional Director, Regional Office,
Employees' State Insurance Corporation,
Ministry of Labour and Employment,
5-9-23, Hill Fort Road, Adarshnagar,
Hyderabad - 500063.
2. K. Aditya Kiran S/o K. V. Ravi Kumar,
Aged 25 years, Occ : Upper Division Clerk,
O/o The Regional Director, Regional Office,
Employees' State Insurance Corporation,
Ministry of Labour and Employment,
5-9-23, Hill Fort Road, Adarshnagar,
Hyderabad - 500063.
3. M. Nikitha D/o M. Ashok Kumar,
Aged 26 years, Occ : Upper Division Clerk,
O/o The Regional Director, Regional Office,
Employees' State Insurance Corporation,
Ministry of Labour and Employment,
5-9-23, Hill Fort Road, Adarshnagar,
Hyderabad - 500063.
4. G. Laxman S/o G. Narasimha Chary,
Aged 32 years, Occ : Upper Division Clerk,
O/o The Regional Director, Regional Office,
Employees' State Insurance Corporation,
Ministry of Labour and Employment,

5-9-23, Hill Fort Road, Adarshnagar,
Hyderabad - 500063.



5. N.Govardhan Reddy S/o N.Shiva Reddy,
Aged 26 years, Occ : Upper Division Clerk,
O/o The Regional Director, Regional Office,
Employees' State Insurance Corporation,
Ministry of Labour and Employment,
5-9-23, Hill Fort Road, Adarshnagar,
Hyderabad0 - 500063.
6. Ch. Bhanu Prasad S/o Ch.Balram,
Aged 29 years, Occ : Upper Division Clerk,
O/o The Regional Director, Regional Office,
Employees' State Insurance Corporation,
Ministry of Labour and Employment,
5-9-23, Hill Fort Road, Adarshnagar,
Hyderabad0-500063.

...Applicants

(By Advocate : Mr.K.R.K.V.Prasad)

Vs.

1. Union of India represented by
The Secretary (L&E), Ministry of
Labour & Employment, Shram Shakti Bhavan,
Rafi Marg, New Delhi-110 001.
2. The Director General, Employees' State
Insurance Corporation, Head Quarters
Office, Panch Deep Bhavan,
CIG Marg, New Delhi-110 002.
3. The Regional Director, Regional Office,
Employees' State Insurance Corporation,
Ministry of Labour and Employment,
5-9-23, Hill Fort Road, Adarshnagar,
Hyderabad0-500063.
4. The Deputy Director, Regional Office,
Employees' State Insurance Corporation,
Ministry of Labour and Employment,

5-9-23, Hill Fort Road, Adarshnagar,
Hyderabad-500063.

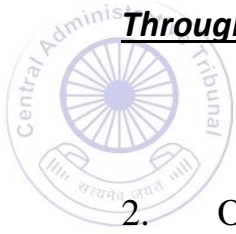


5. The Secretary, Department of
Personnel & Training, Ministry of Personnel,
Public Grievances & Pensions,
Government of India, North Block,
New Delhi-110 001.
6. P. Varaha Venkata Sateesh,
Occ : Upper Division Clerk,
O/o The Regional Director, Regional Office,
Employees' State Insurance Corporation,
Ministry of Labour and Employment,
5-9-23, Hill Fort Road, Adarshnagar,
Hyderabad-500063.
7. Rahul Singh, Occ : Upper Division Clerk,
O/o The Regional Director, Regional Office,
Employees' State Insurance Corporation,
Ministry of Labour and Employment,
5-9-23, Hill Fort Road, Adarshnagar,
Hyderabad-500063.

....Respondents

(By Advocate : Mr.N.Srinivasa Rao, SC for ESIC)

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



Through Video Conferencing

2. OA has been filed challenging the final gradation list dated 12.12.2019 and consequent holding of DPC for promotion to the post of Asst/Head Clerk.

3. Brief facts of the case are that the applicants were appointed as UDCs in the Employees State Insurance Corporation (ESIC) under sports quota and on compassionate grounds in 2016 against direct recruitment quota. The other UDCs like the 6th and 7th respondents, who were arrayed as private respondents to the OA, were selected in 2018 and the select list was issued on 10.11.2017. However, the applicants were shown junior to those recruited subsequently to them, which they claim is against the law laid in K. Meghachandra Singh case by the Hon'ble Apex Court. A DPC is proposed to be conducted for the post of Asst/Head Clerk based on questionable seniority shown in the gradation list dated 12.12.2019. Representations made were rejected. Hence the OA.

4. The contentions of the applicants are that the fixation of seniority in UDC cadre ignoring K. Meghachandra Singh judgment is illegal. DOPT instructions contained in OMs dated 4.8.1980, 4.11.1992 & 9.10.1998 have not been followed. Incorrectly fixing the seniority of the applicants will have devastating effect on their future career. Applicants filed MA

234/2020 citing the judgment of the Hon'ble Jaipur Bench of this Tribunal in OA 194/2020 in support of the relief sought.



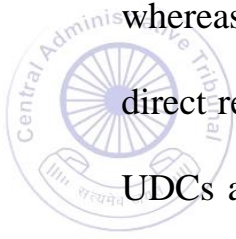
5. In the reply statement respondents submit that the applicants serialised as to 1 to 5 have been appointed under sports quota and the 6th applicant on compassionate grounds. Hon'ble Jaipur Bench observation relates to inter region transfer and hence, not relevant. Inter-se seniority between direct recruits of different years is fixed as per DOPT OM dated 4.3.2014 considering N.R. Parmar case. The applicants cannot rely on K. Meghachandra Singh case since the present dispute is between direct recruits and those appointed under Sportsman quota/ compassionate grounds against direct recruit quota. Parity can be sought only if the grounds and conditions are similar. Respondents cited judgments of the Hon'ble Apex Court in support of their contentions.

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

7. I. The applicants were appointed on 13/10/2016 & 23.12.2016 under sportsman/compassionate grounds as direct recruits against direct recruitment quota. The other UDCs were appointed as direct recruits on 10.11.2017. DOPT instructions issued, from time to time, do clarify that those recruited earlier will rank senior to those recruited subsequently, as has been brought out as under:

“The relative seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment on the recommendations of the UPSC or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of subsequent selection...”

(Para 2.1 of the OM No. 20011/1/2008-Estt (D) Dated 11.11.2010)



The applicants were appointed in 2016 as UDCs as direct recruits and whereas other UDCs were appointed in 2017 in the same cadre against direct recruitment quota. Hence, the applicants have to rank senior to those UDCs appointed later in accordance with the instructions contained in the OM referred to.

II. Further, when Sportsman are recruited under direct recruitment quota, they will be placed enbloc below those who were recruited for the same vacancy year by the staff selection year as per DOPT OM No. 14015/1/76-Est.(D), dated 4.8.1980 (*Para 4.7 of the OM No. 20011/1/2008-Estt.(D) dated 11.11.2010*)

“Where sportsmen are recruited through Employment Exchange or by direct recruitment and are considered along with other general category candidates, they may be assigned seniority in the order in which they are placed in the panel for selection. Where recruitment to a post is through a selection made by the Staff Selection Commission, whether by a competitive examination or otherwise, the sportsmen recruited by the department themselves should be placed en bloc junior to those who have already been recommended by the Staff Selection Commission. The inter-se seniority of sportsmen will be in the order of selection.”

Applicants, in terms of the above OM, shall be placed below those who have been selected in the year 2016 by the Staff Selection Commission and definitely, not below those selected in 2017, as was done by the respondents.

III. In regard to compassionate appointments, their seniority will be based on the date of appointment and will be placed at the bottom of all the candidates recruited / appointed through direct recruitment, promotion etc. in that year. The 6th applicant joined the respondents organisation in 2016 in the UDC cadre on compassionate grounds and whereas others in the

UDC cadre in 2017. DOPT has issued instructions on the above lines vide para 4.8 of OM dated 11.11.2010 as under:



“A number of references were received in this Department seeking clarification as to the fixation of seniority of a persons appointed on compassionate ground vis-à-vis direct recruits and promotees in a particular cadre. It is observed that while the aforesaid principle has been working fine, there has been difficulty in fixation of seniority when two or more candidates come from direct recruitment/ promotion joined the service on different dates. The matter has been reviewed and it has now been decided that the person appointed on compassionate ground in a particular year may be placed at the bottom of all the candidates recruited/ appointed through direct recruitment, promotion etc. in that year, irrespective of the date of joining of the candidate on compassionate ground.”

Therefore, it is explicit that the DOPT instructions referred to above, make it evident that the 6th applicant has to rank senior to those who were appointed later to him in 2017. There can be no two views on the same.

IV. In addition, a 3-Judges Bench of the Hon’ble Supreme Court vide its judgment dt. 19.11.2019 in the matter of ***K. Meghachandra Singh & Ors v. Ningam Siro & Ors*** in Civil Appeal No. 8833-8835 of 2019, has negated the seniority principle laid in N.R. Parmar and has held that those who are not even borne in the cadre of the respondents organisation cannot claim seniority based on the year of vacancy. The relevant paras are extracted hereunder:

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 [(1991) 3 SCC

47], 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. (2000) 7 SCC 561*, 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.”

The applicants were appointed in 2016 and in this year, the other UDC recruited in 2017, were not even borne in the cadre of UDC of the respondents organisation. Respondents relied on the DOPT circular dated 4.3.2014, which is not relevant for two reasons. Primarily, the OM deals with inter-se seniority between direct recruits and promotees, whereas, in the instant case, we are dealing with the seniority between direct recruits and those recruited under sportsmen quota/ compassionate grounds as direct recruits. Hence, the OM is not relevant. Secondly, DOPT OM referred to is based on *N.R. Parmar* judgment, which has been set aside in *K. Meghachandra Singh* case cited supra, by the Hon’ble Apex Court. Thus, the DOPT OM cited would become irrelevant even on this ground.

V. Coming to the Hon’ble Supreme Court judgments cited by the respondents, they would not be of any assistance to the respondents, since it is clean and clear that the facts and the circumstances of the instant case are fully covered by the DOPT memos cited supra and the legal principle

laid down in K. Meghachandra Singh case. The final gradation list was issued on 12.12.2019 subsequent to the K. Meghachandra Singh verdict on 19.11.2019 and therefore, the respondents are prohibited to act against the law of the land set by the Hon'ble Apex Court on the issue. Even from the Hon'ble Jaipur Bench judgment of this Tribunal, one can draw a parallel since it also deals with the seniority of direct recruits involving the aspect of inter regional transfer. Ld. Counsel for the respondents submitted that there are no instructions from DOPT to implement K. Meghachandra Singh Judgment and hence, a direction be given to DOPT, which is the nodal authority to issue instructions in the matter. DOPT has been made a party to the OA and hence, no separate order is required, as requested, in the matter.

VI. To conclude, we find that as per rules and law discussed above, applicants appointed in 2016 are seniors to those UDC who were recruited in 2017.

VII. Thus, in view of the aforesaid, the action of the respondents in placing the applicants below those appointed in UDC cadre in 2017 is against rules, arbitrary and illegal. The OA fully succeeds and therefore, the gradation list dated 12.12.2019 is set aside to the extent of placement of employees from Sl. 16 to 79 in the said list. Consequently, the respondents are directed to consider as under:

- i. To revise the gradation list as per DOPT OM's cited supra and in accordance with the K. Meghachandra Singh judgment of the Hon'ble Apex Court.
- ii. Conduct the DPC for promotion to the post of Assistant based on the revised gradation list as directed at (i) above.

- iii. Time allowed to implement the judgment is 5 months from the date of receipt of the order.



The OA is allowed to the extent indicated above and MA No. 234/2020 stands disposed, with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

VI/evr