

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 291/194/2020

Order reserved on 02.12.2020

DATE OF ORDER: 15.12.2020

CORAM

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

1. Rajkumar Meena S/o Late Shri Laxman Meena, aged about 33 years, R/o VPO Datali, Goner Road, Jaipur, presently working as UDC at Regional Office Jaipur, Employees' State Insurance Corporation, Rajasthan (Group-C) M-9784386818.
2. Sh. Jitendra Pal S/o Sh. Gulab Chandra, aged about 31 years, R/o E-811, Avadhpuri LalkothiYojna, Tonk Road, Jaipur, presently posted as UDC at Branch Office Employees State Insurance Corporation, Kamdhenu Complex Jaipur.
3. Dinesh Kumar Meena S/o Sh. Brijlal Meena, aged about 31 years, R/o BhorikikothiVPO Mandawari Teh. Lalsot(Dausa), presently posted as UDC at Model Hospital Employees Sate Insurance Corporation Laxmi Nagar, Sodala, Jaipur.
4. Sitaram Meena S/o Late Shri Tejaram Meena, aged about 38 years, R/o VPO Sonad, Tehsil Ramgarh, Pachwara, District Dausa, presently posted as UDC at Regional Office, ESIC, Jaipur.
5. Harlal Meena S/o Shri Ram Chandra Meena, aged about 38 years, R/o Badala Ki Dhani, VPO Jhar, Tehsil Bassi, Jaipur, presently posted as UDC at Branch Office, Pratapnagar, Jaipur.
6. Pankaj Swami S/o Shri Chand Ratan Swami, aged about 30 years, R/o II/5, EPFO Colony, Shankar Nagar, Jodhpur presently posted as UDC at Sub Regional Office, Jodhpur.
7. Vishnu Kumar S/o Late Shri Hari Narayan Meena, aged about 39 years, R/o Outside Delhi Gate,

Behind Khas School, Alwar, presently posted as UDC at Branch Office, ESIC, Alwar.

8. Dharmesh Gehlot (Dharm Singh Gehlot) S/o Shri Gaje Singh Gehlot, aged about 32 years R/o G.S. Bhawan, Mayali Mandawata, Post Mandore Jodhpur, presently posted as UDC at Sub Regional Office ESIC, Jodhpur.
9. Ganesh Choudhary S/o Shri Lala Ram Choudhary, aged about 26 years, R/o Opp. Ganesh Mobile E-Mitra, New Bhakari Bas, Soorsagar, Jodhpur, presently posted as UDC at Sub Regional Office, Jodhpur.
10. Harsh Jangid S/o Shri Sunil Kumar Sharma, aged about 30 years, R/o B-193, Chandravardai Nagar, Ahilya Bai Marg, Ajmer, presently posted as UDC at Regional Office, Employees' State Insurance Corporation, Jaipur.
11. Jasraj Singh Ranawat S/o Dalpat Singh, aged about 32 years R/o 488, Bapu Nagar Ext., Pali, Rajasthan, presently posted as UDC at Branch Office, Pali, Marwar.
12. Vikas Kumar Meena S/o Late Shri Rajendra Kumar Meena, aged about 30 years, R/o Village Patan Ka Bas, Post Patan, Tehsil Raisi, District Alwar, presently posted as UDC at ESIC Hospital Alwar.
13. Rajeev Kumar Yadav S/o Shri Rohitashwa Yadav, aged about 32 years, R/o VPO BawadSakatpura, Tehsil Mundawar, Alwar presently posted as UDC at Branch Office Behror.
14. Rajendra Kumar Deegwal S/o ShriBabulal Deegwal, aged about 34 years, R/o 43, BhawneshwariVatika, Bajri Mandi Road Panchyawala, Vaishali Marg West, Jaipur, presently posted as UDC at Regional Office, ESIC, Jaipur.
15. Sh. Kapil Sharma S/o Shri Tikam Chandra Sharma, age about 30 years R/o Mahesh Nagar, Rajgadh (Alwar), presently posted as UDC at Regional Office Employees State Insurance Corporation, Jaipur.
16. Jitender Singh C/o Dhanpati Devi, aged about 33 years, H.N. 20/459, Gali No. 11, Vijay Nagar Rewari, Haryana, presently posted as UDC at ESIC Hospital, Employees' State Insurance Corporation, Bhiwadi (Alwar).

....Applicants

Shri Banwari Sharma, counsel for applicants (through Video Conferencing).

VERSUS

1. The Union of India through the Secretary, Ministry of Department of Labour & Employment, Government of India, Panchdeep Bhawan, Comrade Indrajeet Gupta Marg, New Delhi – 110002.
2. The Director General, Department of Employees State Insurance Corporation (E.S.I.C.), Panchdeep Bhawan CIG Marg, New Delhi – 110002.
3. The Regional Director, E.S.I.C., Rajasthan, Panchdeep Bhawan, Bhawani Singh Marg, Jaipur – 302005.
4. The Dy. Director (Administration), E.S.I.C., Rajasthan, Panchdeep Bhawan, Bhawani Singh Marg, Jaipur – 302005.
5. The Ministry of Department of Personnel and Training, Central Secretariat, New Delhi - 110001.
6. Shri Ankit Khandelwal S/o Shri Ghanshyam Prasad Gupta, presently posed as UDC at Regional Office, Jaipur through Regional Director – 302006.
7. Shri Yugveer Sharma S/o Shri Subhash Sharma, presently posted as UDC at Regional Office, Jaipur through Regional Director – 302006.
8. Shri Krishan Kumar S/o Shri Hema Ram, presently posted as UDC at Sub Regional Office, Udaipur through Regional Director – 313004.
9. Shri Sachin Kumar Jaiswal S/o Shri Bhagwan Singh, presently posted as UDC at Branch Office, Bharatpur through Regional Director – 321001.
10. Shri Pradeep Kumar Sharma S/o Shri Ramniwas Sharma, presently posted as UDC at Sub Regional Office, Jodhpur through Regional Director – 342006.
11. Shri Ajay Kumar Yadav S/o Shri Ram Lal Yadav, presently posted as UDC at Branch Office, Bhiwadi through Regional Director – 301019.
12. Shri Pawan Gupta S/o Shri Giriraj Gupta, presently posted as UDC at Branch Office, Bhawani Mandi through Regional Director – 320502.
13. Shri Ashutosh Goyal S/o Shri Anil Kumar Goyal, presently posted as UDC at Sub Regional office, Udaipur through Regional Director – 313001.

14. Shri Kuldeep Singh Baghela S/o Shri Ghirdhari Lal Baghela, presently posted as UDC at Sub Regional Office, Udaipur through Regional Director - 313001.
15. Shri Dinesh Kumar Chaudhary, S/o Shri Vedpal Singh, presently posted as UDC at Sub Regional Office, Udaipur through Regional Director - 313001.
16. Shri Heera Lal S/o Shri Laxman Ram, presently posted as UDC at Sub Regional Office, Jodhpur through Regional Director - 342006.
17. Ku. Shaifali Sharma D/o Shri Chandra Shekhar Maharshi, presently posted as UDC at Branch Office, Khamdhenu Complex through Regional Director - 302001.
18. Shri Bheemsingh Choudhary S/o Nainaram Choudhary, presently posted as UDC at Sub Regional Office, Jodhpur through Regional Director - 342006.
19. Shri Ujala Garg, S/o Shri Vipin Garg, presently posted as UDC at ESIC Hospital, Bhiwadi through Regional Director - 301019.
20. Shri Mahipal Chhaba S/o Shri Pukhraj, presently posted as UDC at Sub Regional Office, Jodhpur through Regional Director - 342006.
21. Shri Munindra Yag S/o Shri Ratan Lal Yag, presently posted as UDC at Sub Regional Office, Udaipur through Regional Director - 313004.

....Respondents

Shri T.P. Sharma, counsel for respondent Nos. 1 to 5 (through Video Conferencing).

Shri Anurag Kalavatiya, counsel for respondent Nos. 6 to 21 (through Video Conferencing).

ORDER

Per: DINESH SHARMA, ADMINISTRATIVE MEMBER

In the instant OA, the applicants have mainly prayed for quashing the draft seniority list dated

11.03.2020 (Annex. A/1), which is final qua the applicants in view of rejection of their objection, and for directing the respondents to prepare the final seniority list in the light of observation made by the Hon'ble Apex Court in the case of **K. Meghachandra Singh and Ors. Vs. Ningam Siro & Ors.** in Civil Appeal No 8833-8835/2019 decided on 19.11.2019. They have also prayed for direction to the respondents to hold the consequent review DPC for promotion from the post of UDC to Assistant/Head Clerk against the vacancies of the year 2020 (01.01.2020 to 31.12.2020) from the date when other candidates have been considered and recommended for promotion with all consequential benefits.

2. The case of the applicants is mainly based on the aforementioned recent decision of the Hon'ble Apex Court which has overturned the earlier decision of the Apex Court in the case of **Union of India & Others vs. N.R. Parmar & Others** (2012) 13 SCC 340. The applicants have come to Rajasthan Region, from other regions, following the Inter-regional Transfer Policy (Annex A/3). Clause 5 of this policy provides for fixing the seniority of such transferee below all the

employees appointed during the year in the recipient region. The applicants joined their duties in Rajasthan in the months of August/October 2016. However, the draft seniority list (Annex. A/1) puts them below the officers who joined service in the year 2017. This has been obviously done following the now overruled N.R. Parmar case (*supra*), which had directed the seniority of direct recruits (*vis-a vis* selectees through promotion) to be fixed with respect to the vacancy year to which any direct recruitment related (and not when it actually took place). An earlier OA filed by the applicants before this Tribunal (OA 291/777/2019) was dismissed as premature in view of the pendency of their representation before the authorities. Now, the impugned draft seniority list (Annex A/1) contains a remark with respect to the applicants' objections that the seniority list has been drawn on the basis of existing DoPT directions and they have not received any direction from the Corporate Headquarters or from the DoPT regarding the final decision of the Hon'ble Supreme Court in the two cases. The applicants have argued that this amounts to ignoring the law of the land. The respondents cannot deny their right on such ground.

3. A reply has been filed by the official respondents in which they have quoted the instructions/guidelines about determination of seniority under Inter Regional Transfer Policy, which puts transferees on request below all the employees appointed during the year in the recipient region. The respondents have not materially differed with the facts stated by the applicants and have also admitted [in Para 4(xiii)] the fact of judicial pronouncement and the observation of the Hon'ble Apex Court that "seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre". This paragraph goes on to state:

"Therefore Regional Director is to take necessary action as per existing instructions. However, in this regard DOPT has not issued any instruction on the order of Hon'ble Supreme Court. Hence it cannot be implemented to fix seniority pending DOPT instructions".

4. This case was earlier decided by the Tribunal's order dated 23.06.2020. However, on filing of a Writ Petition (No. 7187/2020), by the private respondents (on ground that they were not heard by this Tribunal before passing of that order), the Hon'ble High Court of Rajasthan at Jaipur quashed that order and have remanded the case to the Tribunal for hearing the

parties again. Following this, the matter was heard again, through Video Conferencing on 02/12/2020. During the course of the arguments, while the learned counsel for the applicants and the official respondents repeated the arguments advanced in their pleadings, the learned counsel for the private respondents also stressed the point mentioned in their reply that the decision of the Hon'ble Supreme Court in the case of K. Meghachandra Singh (supra) applied only prospectively and it makes an exception in case of those persons whose seniority is fixed under the relevant rules from the date of vacancy/date of advertisement. It was vehemently argued that the word "relevant rules" mentioned in K. Meghachandra Singh's case included the DoPT instructions contained in OM dated 04.03.2014 (Ann. R/2) also since these were the rules relevant for determining inter-se seniority on the dates when the objections to the seniority lists were called. He argued that the department delayed decision on finalising the seniority list, which, if finalised on time, would have clearly kept this matter out of the "prospective" application of K. Meghachandra Singh's case. The delay in finalising seniority lists and giving benefit of N.R. Parmar's case

to other employees (holding other posts in the department) also amounts to violation of rights of equality of treatment.

5. After going through the pleadings and hearing the arguments of the learned counsels of all the parties, it is clear that the disposal of this case depends squarely on the interpretation of the scope and ambit of the decision of the Hon'ble Supreme Court in the case of K. Meghachandra Singh (supra). We are reproducing here the most relevant portion of that judgment:

"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.”

6. The learned counsel for the respondents has argued that the exception made in the last sentence of the above quoted paragraph (for cases “where seniority is to be fixed under the relevant Rules from the date of vacancy/the date of advertisement”), includes the DoPT OM dated 04.03.2014 (Ann. R/2). On perusal of this OM, we find that it was issued (as expressly mentioned in para 5 of this document) in pursuance of the Hon’ble Supreme Court Judgment in N R Parmar’s case. It is hard to believe that the Hon’ble Supreme Court, in K. Meghachandra Singh (supra), while overruling N. R. Parmar’s case, intended to do so while excepting the order issued in pursuance of that case out of its ambit. Though the learned counsel for the private respondents still tried to convince us by arguing that the Hon’ble High Court could have done so to give time to the Government to apply its mind before issuing a fresh order, we are not inclined to accept this illogical and apparently stretched argument. The learned counsel also could

not show whether in anyone else's case, the seniority was fixed following the principles of the N.R. Parmar's judgment, after the pronouncement of the K. Meghachandra Singh's Judgment, and even if so, whether such, wrong fixation gives any right to the private respondents to have that wrong committed in their case too. There is a more or less clear admission by the official respondents that they have not taken into consideration the recent decision of the Hon'ble Supreme Court, only because of want of direction from the DOPT/ Corporate Headquarters. This is certainly not a valid ground for not following a clear decision of the Hon'ble Apex Court that leaves no doubt about not giving seniority to anyone from a date before that person is borne in the cadre. In the present case, it is not denied that the applicants came to Rajasthan Region in the year 2016, while the persons, who have been put above them in the impugned draft seniority list, joined service in later years. Giving such persons seniority over the applicants, *prima-facie*, falls foul of the judgment of the Hon'ble Apex Court in K. Meghachandra Singh's case (*supra*). We were informed by the learned counsel for the official respondents that the

aforementioned judgment is to be implemented only prospectively. Since, in the present case, the impugned order is avowedly a draft seniority list, following Hon'ble Apex Court's decision in this case, would not be a retrospective implementation of the same.

7. The impugned seniority list is therefore set-aside. The official respondents (respondents no 1 to 5) are directed to revisit the draft seniority list in the light of the current legal position, including the above mentioned judgment of the Hon'ble Apex Court in K. Meghachandra Singh's case (supra), and publish a fresh seniority list, within 3 months from the date of receipt of a certified copy of this order. The OA is disposed of accordingly. No costs.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER