

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/0026/2020

Date of CAV : 17.03.2021

Date of Pronouncement : 29.03.2021



Hon'ble Mr. Ashish Kalia, Judl. Member

Hon'ble Mr. B.V. Sudhakar, Admn. Member

1. V. Srikanth, S/o. V. Satyanarayana (Group-C),
Aged 30 years, Occ: Multi Tasking Staff,
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. M. Lingam Yadav, S/o. late M. Sattaiah,
Aged 28 years, Occ: Multi Tasking Staff,
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. P. Bala Durga Rao, S/o. P.N. Satyanarayana,
Aged 31 years, Occ: Multi Tasking Staff,
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. V. Mahesh, S/o. late V. Venkatesh,
Aged 27 years, Occ: Multi Tasking Staff,
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.

...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,
Employee's State Insurance Corporation,
Head Quarters Office,
Panch Deep Bhavan, CIG Marg, New Delhi – 110002.
3. The Regional Director, Regional Office,
Employees' State Insurance Corporation,
Ministry of Labour and Employment,
5-9-23, Hill Fort Road, Adarshnagar,
Hyderabad – 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. Bonagiri Raju,
Occ: Multi Tasking Staff,
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. Rajeev Agarwal,
Occ: Multi Tasking Staff,
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)

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



2. The applicants filed the OA questioning the final gradation list published vide Memo. Dt. 20.12.2019, wherein they were enlisted below the MTS who were appointed latter to them and the proceedings of the DPC held in December 2019 for promotion to the post of LDC and to set aside the said gradation list to the extent of Sl. No. 25 to 49 and to revise the list by placing the applicants at Sl. No. 25 to 28 and promote them as LDC w.e.f. 01.01.2020 by conducting a review DPC.

3. Brief facts of the case are that the applicants 1 to 3 were appointed in 2016 under sports quota and the 4th applicant in 2011 on compassionate grounds as MTS in the respondents organisation against direct recruit quota. The draft seniority list as on 31.12.2018 was published on 9.12.2019 in order to conduct DPC for promotion to the LDC vacancies of the year 2020. In the seniority list, some MTS, who were recruited later to the applicants, were shown above and hence, individual representations were submitted to show the seniority from the date of appointment, as directed in K. Meghachandra Singh & ors v. Ningam Sior & Ors delivered by the Hon'ble Supreme Court on 19.11.2019. Final gradation list was released on 20.12.2019 placing the applicants as Sl. Nos. 50 to 53, ignoring the objections raised by the applicants on grounds that no orders have been received from DOPT in regard to the Hon'ble Apex Court verdict cited. Hence, the OA.

4. The contentions of the applicant are that the Meghachandra Singh judgment does not require ratification by the respondents. The representations were not sent to the competent authority to decide the issue and without doing so, incompetent authorities disposed the representations and proceeded to conduct the DPC on 23.12.2019. Applicants are fully eligible to be considered for LDC promotion since they have the required educational qualifications and rendered 3 years of service in MTS category.



The applicants could not come into the zone of consideration because of the erroneous fixation of seniority. As per DOPT memo dated 4.8.1980, applicants have to be placed enbloc junior to the direct recruits recruited by the Staff Selection Commission (SSC) in the relevant recruitment year and as per DOPT memo dated 9.10.1998, the interse seniority of those appointed on compassionate grounds has to be fixed with reference to the date of appointment of direct recruits/promotees. The MTS employees listed from 25 to 49 were recruited later to the applicants and hence they cannot rank senior and also they have not rendered 3 years of service to be considered for promotion as LDC. Applicants' promotion has been unnecessarily deferred causing monetary loss and seniority in the higher cadre.

5. Respondents claim that the final gradation list dated 20.12.2019 was published in accordance with DOPT memo dated 4.3.2014, which, in turn, was issued in compliance with the judgment in N.R. Parmar case, wherein the seniority was directed to be considered as per the year in which the recruitment process has been initiated. The recruitment process for the

private respondents commenced in 2015 and whereas applicants were recruited in 2016. Hence, applicants rank junior. There was no need to forward the representation to the higher authorities since the DOPT OM dated 4.3.2014 was clear on the issue and is still operational. In Meghachandra Singh case, the cited DOPT OM was not cancelled and also the dispute in the said judgment was in regard to seniority of direct recruit and promotees, whereas in the present case, it is between two batches of direct recruits. The Hon'ble Supreme Court decision under Article 141 of the Constitution is binding for the courts but the decision given is not a statute. Judicial precedent should not be followed automatically in all cases. Respondents cited the Hon'ble Apex Court judgments in support of their averments. The respondents claim that their action is in accordance with the existing rules and prevailing policy. Policies cannot be changed abruptly. The delay in appointing the candidates of recruitment year 2015 in 2018 was due to administrative reasons. Settled seniority should not be unsettled. Relief granted would have pan-India ramifications and lead to a spate of litigations.



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

7. I. The dispute is in regard to fixing the seniority of the applicants, who were directly recruited in 2016 and those who joined the respondents organisation later to them as direct recruits. The applicants who were directly recruited as MTS in 2016 were shown as Sl. No. 50 to 53 whereas those recruited later to them in 2018 were shown at Sl. No.25 to 49 in the final gradation list published on 20.12.2019. Consequently, the

applicants did not figure in the zone of consideration for promotion to the post of LDC. In order to ensure that there is no irreparable injury caused to the cause of the applicants, an interim order was passed on 01.01.2020 directing the respondents not to promote the employees claimed to be juniors to the applicants and listed at Sl. No. 25 to 49 in the final gradation list, till the disposal of the OA.



II. The main contention of the applicants is that they have been appointed earlier and hence, rank senior. Their seniority has to be fixed from the date of appointment and have cited Meghachandra Singh judgment in support of their contention. The relevant paras of the cited judgment are extracted hereunder:

“29. Before proceeding to deal with the contention of the appellants’ Counsel vis-à-vis the judgment in N.R. Parmar (Supra), it is necessary to observe that the Law is fairly well settled in a series of cases, that a person is disentitled to claim seniority from a date he was not borne in service. For example, in J.C. Patnaik (Supra) the Court considered the question whether the year in which the vacancy accrues can have any bearing for the purpose of determining the seniority irrespective of the fact when the person is actually recruited. The Court observed that there could be time lag between the year when the vacancy accrues and the year when the final recruitment is made. Referring to the word “recruited” occurring in the Orissa Service of Engineers Rules, 1941 the Supreme Court held in J.C. Patnaik (Supra) that person cannot be said to have been recruited to the service only on the basis of initiation of process of recruitment but he is borne in the post only when, formal appointment order is issued.

30. The above ratio in J.C. Patnaik (Supra) is followed by this Court in several subsequent cases. It would however be appropriate to make specific reference considering the seniority dispute in reference to the Arunachal Pradesh Rules which are pari materia to the MPS Rules, 1965, (vide (2007) 15 SCC 406 - Nani Sha & Ors. Vs. State of Arunachal Pradesh & Ors.). Having regard to the similar provisions, the Court approved the view that seniority is to be reckoned not from the date when vacancy arose but from the date on which the appointment is made to the post. The Court particularly held that retrospective seniority should not be granted from a day when an employee is not even borne in the cadre so as to adversely impact those who were validly appointed in the meantime.

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38. When we carefully read the judgment in *N. R. Parmar (Supra)*, it appears to us that the referred OM's (dated 07.02.1986 and 03.07.1986) were not properly construed in the judgment. Contrary to the eventual finding, the said two OM's had made it clear that seniority of the direct recruits be declared only from the date of appointment and not from the date of initiation of recruitment process. But surprisingly, the judgment while referring to the illustration given in the OM in fact overlooks the effect of the said illustration. According to us, the illustration extracted in the *N.R. Parmar (Supra)* itself, makes it clear that the vacancies which were intended for direct recruitment in a particular year (1986) which were filled in the next year (1987) could be taken into consideration only in the subsequent year's seniority list but not in the seniority list of 1986. In fact, this was indicated in the two OM's dated 07.02.1986 and 03.07.1986 and that is why the Government issued the subsequent OM on 03.03.2008 by way of clarification of the two earlier OM's.

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*⁴, 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.*⁵ 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 ⁴ (1991) 3 SCC 47 ⁵ (2000) 7 SCC 561 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.

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47. As earlier discussed, the Rule 28 of the MPS Rules, 1965 shows that seniority in the service shall be determined based on the date of appointment to the service. In particular Rule 28(i) of the MPS Rules, 1965 which is applicable to both promotees and direct recruits, provides that seniority shall be determined by the order in which the appointments are made to the service. If seniority under Rule 28(i) is to be determined based on the date of appointment, it cannot be said that for the purpose of Rule 28(iii), the seniority of direct recruits should be determined on the basis of the date of initiation of the recruitment process. 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 N.R. Parmar in our considered opinion, is not a correct view."

III. The final gradation list of MTS cadre was issued on 20.12.2019 and the Meghachandra Singh verdict was delivered on 19.11.2019. Hence the respondents were expected to follow the latest judgment on the subject. Instead, the reply statement is loaded with unnecessary elaborations not directly related to the issue. To be precise, Meghachandra Singh judgment supersedes N.R Parmar verdict. Hence, when N.R.Parmar is superseded, what is left to follow for respondents is the moot question which the respondents need to ponder. It requires no expertise to answer that Meghachandra Singh rules the roost. Therefore, respondents instead of following Meghachandra Singh have laboured to explain that N.R.Parmar holds the field since the DOPT OM dated 4.3.2014, which was issued based on N.R.Parmar was not set aside. The plea lacks legal logic.



IV. Hon'ble Supreme Court interprets law and in the process the legal principle laid down becomes the law of the land. Such a finding of the Hon'ble Supreme Court is universal and is applicable not only to the Courts, as claimed by the respondents, but to the entire administrative spectrum of the State/Central Government when the issue pertains to any aspect of law. Hence, the respondents organization, which is a speck of the humongous Central Govt. establishment cannot be an exception. The legal principle laid down by the Hon'ble Supreme Court in Meghachandra Singh that seniority will count from the date of appointment and not before anyone is borne on the cadre of any establishment is crucial and not whether the issue is between direct recruits and promotes or between direct recruits. The aspect is dispute is how to reckon seniority and Meghachandra Singh provides the answer which governs the field in respect of seniority and the same has to be respected by following it without any iota of doubt. Incidentally, it needs to be observed that the Hon'ble Apex Court has taken pains and due care to see that there would not be any administrative difficulties, by directing that the seniority fixed earlier by adopting N.R.Parmar need not be disturbed. The logical corollary that would follow was that, from the date of delivery of Meghachandra Singh, the rules of the game have changed and they need to be adhered to strictly. Respondents cannot play the game against the new rules /legal principle laid down in Meghachandra Singh.

V. Once Meghachandra Singh is followed, the general principle of seniority would come into play in considering employees for promotions

to the higher cadre. There are spate of instructions from DOPT on the same, which are commonly followed as pleaded in the OA. In the instant case, the applicants have rendered 3 years of service as MTS with the required educational qualifications and hence, are eligible to be considered for promotion as LDC. Instead of doing so, the respondents placed the employees, who joined later to the applicants in 2018, from Sl.25 to 49 and the applicants below them from Sl. 50 to 53 in the final gradation list issued on 20.12.2019. As a result of the questionable decision of the respondents under reference, the applicants could not be included in the zone of consideration for promotion to the post of LDC. The mistake has thus been done by the respondents in not following Meghachandra Singh and therefore, they should not make the applicants suffer, as observed by the Hon'ble Apex Court in a series of judgments as under:



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. 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."

VI. The respondents going ahead with the final gradation list in December 2019 in MTS cadre, despite bringing to the notice of the respondents about Meghachandra Singh verdict smacks of lack of responsibility in dealing with an important legal decision and that too, by those administrative personnel who have no competence to deal with policy issues. When representations were submitted by the applicants, it was for

the lower/local authorities to refer them to the superiors who deal with policy matters. Thus, the decision of the local authorities to ignore the claim of the applicants as per the directions of the Hon'ble Supreme Court is arbitrary and a colourable exercise of power. More particularly they have gone ahead with the DPC and but for the interim intervention of the Tribunal the cause of the applicants would have suffered irreparable damage. It is time that 1st respondent takes note of this aspect and issue directions to lower formations to not to meddle with policy issues in the context of legal decisions delivered by the superior judicial fora. If not, those responsible may have to be called upon to apprise the Tribunal as to why superior Courts orders are being dealt by those who are not competent to deal with them.



VII. The respondents have committed an illegality by acting against the orders of the Hon'ble Apex Court in Meghachandra Singh. The Tribunal cannot be a silent spectator when such transgression of the legal principle of the Hon'ble Apex Court is infringed with the brazenness with which the respondents have done in the instant case. The cited judgment was delivered in November 2019 and the final gradation list was issued in December 2019 despite representations against the gradation list pointing out the legal proposition. The matter was under dispute and therefore the question of settled seniority would not arise. The decision of the respondents has to be in accordance with law. Respondents cannot take cover by pleading that since they have decided the seniority and therefore it is settled and over, more so against the latest Hon'ble Apex Court

judgment. Besides, the question of settled seniority does not arise, since the applicants have approached the Tribunal within the limitation period and that to on a valid legal basis, challenging the final gradation list.



VIII. Respondents further argument is that the Supreme Court decision is not a statute. The constitutional responsibility of the Hon'ble Apex Court is to interpret the statute/law and in the process the legal interpretation of the Hon'ble Supreme Court in respect of any issue attains finality as in the present case of seniority by superseding its own judgment in N.R.Parmar. Law is dynamic and maintains rhythm with the societal demands arising with the passage of time. Law that is timed to the changing times is the essence of legal jurisprudence.

Further, Hon'ble Supreme Court lays down the broad principles and does not go into the nitty-gritty of each and every OM issued by the Government Organisations. Once a legal principle is laid down, then any OM which is not in wavelength with the principle laid would stand invalid. This requires no further elaboration. There has to be resonance with the decisions of the Hon'ble Apex Court and not dissonance. Therefore, in view of the above, the Hon'ble Supreme Court judgments cited in respect of statute by the respondents are of no relevance or assistance to them in regard to the dispute on hand.

IX. Besides, respondents have also taken the stand that a finding of a court in a particular case cannot be taken as a binding precedent unless

facts and circumstances are similar. We agree with the respondents and in the instant case, Hon'ble Apex Court dealt with N.R.Parmar case, which was followed in fixing the seniority of the Private respondents by the official respondents, and did not agree with the interpretation laid therein while delivering the verdict in Meghachandra Singh. Hence the issue dealt in Meghachandra Singh is directly related to the dispute in question. Therefore, the averments made by the respondents by citing judgments in regard to binding precedents are irrelevant.



X. Further, the other contention made by the respondents that some time is required to frame policies. On the ground of requirement of time to frame policies, injustice cannot be done. However, it is for the executive wing to devise ways and means to respond and act quickly in congruence with the legal principles laid down by the Hon'ble Apex Court. Justice delayed is justice denied. In case respondents would not act promptly the repercussions would be multifold, in terms of the seniority of the applicants, their future promotions, associated monetary loss and so on. The respondents having thus admitted that the dispute relates to a policy matter, it was not proper for the local authorities to not to forward the representations of the applicants to the competent authority competent to deal with policy issues. Such decisions come under the ambit of colourable exercise of power. It also gives room to the impression as to whether the local authorities are professing the case of private respondents which is impermissible under law as enunciated by Hon'ble Apex Court in

S.I. Rooplal & Anr vs Lt. Governor Through Chief Secretary, Delhi & Ors dt. 14 December, 1999 in Appeal (Civil) No.5363-64 of 1997.



XI. Further, any decision taken by the respondents which contravenes the directions of the Hon'ble Apex Court is liable to be set aside. The instant case is one such classic case where the Tribunal has to set aside the decision of the respondents in regard to the issue of final gradation list and therefore, we quash and set aside the gradation list dated 20.12.2019. Consequently, we direct the respondents as under:

- i. To consider issue of fresh gradation list in respect of MTS by following the legal principle laid down in the judgment in Meghachandara Singh by the Hon'ble Apex court in respect of fixing the seniority.
- ii. Thereafter, conduct the review DPC and promote the applicants, if they are otherwise eligible, from the date they become eligible to be promoted as LDC on notional basis, so that they gain notional seniority in the LDC cadre.
- iii. No wages will be paid for the period for which they have been promoted on notional basis.
- iv. Consider acting on the suggestion made at para VI by the 1st respondent.

- v. Time period allowed to implement the judgment is 3 months from the date of receipt of this order.

With the above directions, the OA is allowed to the extent indicated. There shall be no order as to costs.



(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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