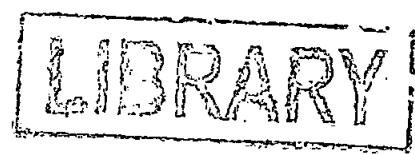


CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

O.A. No.350/219 of 2020

Date of Order: 1-10-21



O.A.No. 350/422 of 2021 (with M.As. 161,317 & 352 of 2021)

&

M.A. Nos. 183 & 184 of 2021 (in disposed of O.A. 350/1530/2019)

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

1. VIKASH KUMAR, son of Shri Ashoke Kumar Mehta aged about 35 years, residing at 137, VIP Road, Kolkata-700067 and working in the post of Inspector in the Income Tax Department in the office of Principal Director of Investigation (Kolkata), P/13, Ayakar Bhawan (Annexe). 5th Floor, Chowringhee square, Kolkata-700069.
2. UDITYA NARAYAN, son of Late Jai Narayan Pandey, aged about 37 years, residing at Block 1, Aarakar Niwas, 18, Ultadanga Main Road, Kolkata-700067 and working to the post of Inspector in the Income Tax Department in the office of Deputy Director of Investigation, Unit-1(4)(Kolkata), P-13, Aayakar Bhawan (Annexe), 5th Floor, Chowringhee Square, Kolkata-700069.
3. RAHUL KUMAR CHOUDHARY, son of Shri Deo Nath Choudhary, aged about 34 years, residing at Chakpachuria, Kolkata- 700135 and working to the post of Inspector in the Income Tax Department in the office of Deputy Director of Investigation. Unit-2(2)(Kolkata), P-13, Aayakar Bhawan (Annexe); 5th Floor, Chowringhee Square, Kolkata 700069.
4. MUKESH KUMAR THAKUR, son of Shri Jai Prakash Thakur, aged about 34 years, residing at Premises No. 421, Teachers Cooperative Housing Estate, Chak Garia, Kolkata 700094 and working to the post of Inspector in the Income Tax Department in the office of Joint Commissioner of Income Tax (Central), Aayakar Bhawan Poorva, Kolkata-700107.

5 SUMAN DAN, son of Shri Ranjit Dan, aged about 35 years, residing at Flat No. 3C, Bimala Apartment. Maharnayatala, Garia, Kolkata-700084 and working to the post of Inspector in the Income Tax Department in the office of PDIT (Int. Taxn.) Kolkata, Aayakar Bhawan Poorva, Kolkata-700107.

6. NIRAJ KUMAR, son of Shri R.P. Singh, aged about 42 years, residing at Block-1. Quarter No 10/2, Aayakar Niwas 18. Ultadanga Main Road, Kolkata 700067 and working to the post of Inspector in the Income Tax Department in the office of PCIT/REAC/2, 3, Government Place, Kolkata- 700001.

.....Applicants in OA 219/2020

1. Rahul Kumar Choudhary, son of Deonath Choudhary, presently residing at Curiocity, Chakpachuria, Near Ecospace, Post Office- Kadampukur, Rajarhat, Newtown, District- North 24 Parganas, Pin- 700135.

2. Mukesh Kumar Thakur, son of Jaiprakash Thakur, residing at 421 Chakgaria 2nd floor, Police Station Panchasayar, Kolkata-700094.

.....Applicant in OA 422/2021

1. Union of India represented through the Office of Principal Chief Commissioner of Income Tax, P-7, Chowringhee Square, 1st Floor, Kolkata-700069.

.....Applicant in M.A. Nos. 183 & 184 of 2021

Vrs.

1. UNION OF INDIA service through the Secretary, Ministry of Finance, Department of Revenue, Government of India, 128-B, North Block, New Delhi 110001.

2. THE CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS service through its Chairman, Ministry of Finance, Department of Revenue, 4th Floor, Hudco Vishala Building, Bhikaji Cama Place, New Delhi-110066.

3. PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX,
West Bengal & Sikkim, Aayakar Bhawan, P-7,
Chowringhee Square, Kolkata 700069.

4. THE COMMISSIONER OF INCOME TAX. (Administration
& Tax Payer Services) Kolkata. Aayakar Bhawan, P-7,
Chowringhee Square, Kolkata 700069.

5. THE UNDER-SECRETARY to the Government of India,
Ministry of Finance, Department of Revenue, Central
Board of Excise and Custom, 4th Floor, Hudco Vishala
Building, Bhikaji Cama Place, New Delhi-110066.

.....Official Respondents

6. SATYABRATA PRAMANIK, son of Radhika Ranjan
Pramanik, aged about 48 years, working as Inspector of
Income Tax posted in the office of Deputy Commissioner
of Income Circle 36, Kolkata, and residing at 1594,
Madurdaha Kolkata 700107.

7. BINEET KUMR GHOSH, son of Benay Kumar Ghosh,
aged about 45 years working as Inspector of Income Tax
posted in the office of Additional Commissioner of
Income Tax, Headquarters (Admin & TPS) Kolkata and
residing at 68/8, Aurobindo Road, Konnagar, District-
Hooghly, Pin-712235.

8. MINTU GUHA, son of Dilip Guha, aged about 47 yours
working as Inspector of Income Tax posted in the office
of Principal Commissioner of Income Tax, 2, Kolkata,
and residing at Aayakar Biwan, Quarter No 7/1, Block-2,
18, Utadanga Main Road, Kolkata 700067.

9. DEBDUTTA GOSWAMI, son of Debabrata Goswami,
aged about 47 years, working as Inspector of Income Tax
posted in the office of Principal CCIT, Vigilance Section,
Kolkata and residing a 283, B. M. Saha Road, Bank Park,
Hindmotor, Hooghly, Pin-712233.

.....Private Respondents

.....Respondents in OA 219/2020

1. Union of India, through the Secretary Department
of Revenue Ministry of Finance, having office at North
Block, New Delhi-110011.

2. Union of India, through the Secretary, Department of Personnel and Training, having office at North Block, Cabinet Secretariats, New Delhi-110011

3. The Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, through the Chairman, having office at North Block, New Delhi -110011.

4. The Principal Chief Commissioner of Income Tax, West Bengal and Sikkim having office at Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700069.

5. The Joint Commissioner of Income Tax (Admin), West Bengal, having office at Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700069.

6. The Deputy Commissioner of Income Tax, Head Quarters (Pers. & Estt.), having office at Aayakar Bhawan, P-7, Chowringhee Square, Kolkata 700069.

.....**Respondents in OA 422/2021**

Sri Satyabrata Pramanik & Others.

..... **Respondents in M.A. Nos. 183 & 184 of 2021**

For the Applicant(s): Mr. P.C.Das, Ms. T.Maiti, Counsel (in OA 219/2020)
Mr. S.Paul, Mr. K.Basu, Ms. R.De Ghosh, Counsel (in OA 422/2021)
Mr. S.Paul, Counsel (in MA 183 & 184 of 2021)

For the Respondent(s): Mr. S.K.Dutta, Ms. P.Goswami, Counsel (in OA 219/2020)
Ms. E.Banerjee, Counsel (in OA 422/2021)
Mr.S.K.Datta (in MA 183 & 184 of 2021)

ORDER

Bidisha Banerjee, Member (J):

All the applicants in the two O.As, numbered 219 of 2020 and 422 of 2021, are the direct recruits and share a common grievance and would seek identical relief, as such, the matters were heard analogously to be disposed of with this common order.

The applicants in O.A. 1530 of 2019 belong to to rival promotee group and harbour

a grievance different from these two applicant groups. This O.A. was disposed of by this Tribunal vide order dated 21.11.2019 as under:



"Accordingly, without entering into the merits the matter, the O.A is disposed of with a direction upon the respondent authorities to recast the seniority at the earliest, in accordance with the circular dated 27.05.2019, before issuing any further promotion order, and review the promotion ordered on 02.7.2019 (Annexure A-7) in terms of para 6 of the said promotion order, for it has been issued after the circular dated 27.05.2019 but without recasting the seniority in terms of the said circular dated 27.05.2019."

M.A.Nos. 183 and 184 of 2021 (arising out of O.A. 1530 of 2019) has been filed by the respondent-department for modification of the aforesaid order, while condoning the delay, in view of the Three Judge Bench order dated 19.11.2019 passed by the Hon'ble Supreme Court in K.Meghachandra Singh case.

2. The relief sought by the applicants in their respective O.As. are as under:

"In O.A. 219/2020

- a) *Leave may be granted to the applicants to file this application jointly under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987 as the applicants have a common grievance;*
- b) *To pass an appropriate order directing the respondent to consider promotion of the present applicants and to declare that the order dated 21.11.2019 passed by this Hon'ble Tribunal in OA No. 350/1530/2019 and MA No. 350/896/2019 to the extent that the order dated 21.11.2019 is not a bar to consider the promotion of the direct recruit Income Tax Inspectors to the post of Income Tax Offices in terms of the Circular/letter dated 27 May, 2019 and in the light of the order dated 22.01.2018 passed by the Hon'ble Delhi High Court which has been upheld by the Hon'ble Supreme Court vide*

order dated 16.05.2018 in SLP No 11905-11906 of 2018 filed by Shri Diwakar Singh.

c) *To pass appropriate order directing the respondent authority to conduct DPC for considering the promotion of the present applicants to the post of Income Tax Officers those who are admittedly direct recruits and they are working as Income Tax Inspectors either on ad hoc or regular basis by implementing the CBDT's Circular dated 27th May 2019 within a very short period of time at least to save the department from facing the huge workload during the current financial year.*

d) *To declare that the order dated 21.11.2019 passed by this Hon'ble Tribunal in OA No. 350/1530/2019 and MA No. 350/896/2019 could not be applicable in respect of the present applicants those who are direct recruits and are eligible for getting promotion to the post of Income Tax Officer and those who are reportedly most senior candidates than the private respondents.*

In O.A. 422/2021

i) *To pass an order directing the Respondents No. 1, 3 and 4 to grant promotion to the applicants in terms of the seniority list published & circulated vide F. No.: 4E/6/2014-15/Seniority/ITI/16862 dated 15.02.2016 by the respondent no.4;*

ii) *To pass an order directing the respondent authorities, while dealing with the case of the applicants, or for dealing with cases between 03.03.2008 and 27.11.2012 (the date of passing the Judgment on N R. Parmar's Case, to consider/follow/abide by OM dated 07.02.1986 and 03.07.1986;*

iii) *To pass an order directing that the Office Circular dated 27th May 2019 be set aside/not given effect to/Cancelled/Rescinded/Quashed, since the same is contrary to the Para 40 of the Judgment passed by the Three Judges Bench of the Hon'ble Supreme Court in K Meghachandra Singh & Ors Vs. Ningam Siro & Ors, wherein, the seniority determined as per N R Parmar is protected;*

iv) *To pass an order directing the respondents to produce the entire records of the case before this Hon'ble Tribunal for adjudication of the points at issue and administering conscionable justice;*



v) And to pass such further or other order or orders and/or direction or directions as to this Hon'ble Tribunal may deem fit and proper."

3. At hearing, Ld. Counsels for the parties in regard to both the O.As., 219 of 2020 and 422 of 2021, would draw our attention to paragraph 14 of *K.*

***Meghachandra Singh* decision in Civil Appeal No. 8833-8835 of 2019 dated 19.11.2019**, which reads as under (extracted with supplied emphasis, for clarity):

"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 (1991) 3 SCC 47 (2000) 7 SCC 561 Page 25/32 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."

Placing the above, it was submitted that the local authority, being the Principal Chief Commissioner of Income Tax, West Bengal and Sikkim region, vide an O.M. dated 09.04.2021 in regard to fixation of seniority with reference to CBDT/DoPT/Instructions and Judicial decisions, issued instructions. It states as under:

"At present, the following Board's instructions and Supreme Court and CAT judgement are in operation.

- (i) *Instruction dated 27.05.2019 (mentioning DOPT instruction dated 04.03.2014),*
- (ii) *Board's instruction dated 12.02.2021,*
- (iii) *Supreme Court Judgment in the case of Meghchandra Singh (the mode and mechanism of implementation of the same is still pending with the DoP&T)*
- (iv) *CAT judgement in MA No. 350/00896 of 2019 with OA No 350/01530 of 2019-Satyabrata Pramanick Vs. UOI.*

Further, in MA No. 350/00896 of 2019 with O.A.No. 350/01530 of 2019- Saatyabrata Pramanick vs UOI before the Hon'ble CAT, Kolkata it has been held that till the seniority is recast in accordance with instruction dated 27.05.2019 further promotion should not be done.

Issue of Seniority:

Basic tenet of determination of seniority is either

- (i) *the year of vacancy or,*
- (ii) *the year of appointment*

Any other parameters are just the off-shoots of these two main criteria.

In light of this, the Instruction dated 27.05 2019 is hereby examined.

In the paragraph 3 (i) and 3(ii) of instruction dated 27.05.2019 tis stated that every other instructions which were is operation based on which Parmar seniority was determined were withdrawn except for DOPT instruction dated 04.03.2014 and clarification dated 06.06.2014 and that N.R.Parmar case will be applicable prospectively.

In the paragraph 3(iii) of the said instruction, it has also been very clearly stated that since instruction dated 03.03.2008 from DOP&T is withdrawn ab initio (as per instruction dated 04.03.2014 and instruction dated 6.6.2014) anything done according to it needs to be reviewed and its effect is to be nullified.

The impact of para 3 of CBDT instruction dated 27.05 2019 on the seniority is to be determined.

There is no dispute regarding the fact that Parmar judgment will be

xxx

xxx

xxx.

Coming to the Meghchand Singh Judgement, this judgement talks about the improper construal of provisions in the Parmar judgement while over-ruling the same. However, for operational reasons it has held that the seniority already determined as per the Parmar judgement is protected and this judgement (Meghchand Singh Judgement) would be applicable prospectively.

Further, in February, 12, 2021 the Board has given instruction that Parmar Judgement will be applicable prospectively with effect from 27.11.2012, but does not say what needs to be done prior to 27.11.2012.

In view of this and the instruction dated 27.05.2019 read with Meghchand Singh Judgement as discussed above, the seniority determined in the year 2016 based on Parmar Judgement is taken as the seniority for this intervening period upto 27.11.2012.

In the spirit of CAT Principal Bench, Delhi's order dated 02.02.2021 in the case of Pramod Kumar Vs UOI & Ors, 4 weeks time is hereby, given to make representations against the said seniority to be taken for DPC for ad-hoc appointment of Income Tax Officers.

The above seniority is purely provisional and is subject to any CBDT/DOPT Instructions and/or judicial pronouncement on the issue."

4. The applicants in O.A. No. 422/2021, viz. Rahul Kumar Choudhary and Mukesh Kumar Thakur, and the applicant in O.A. 219/2020, viz. Vikash Kumar, Uditya Narayan, Rahul Kumar Choudhury, Mukesh Kumar Thakur, Suman Dan and Niraj Kumar, are Direct Recruits in the Department. Applicants in both the O.As. have relied upon the latest DoPT O.M. dated 13.08.2021 on the subject "Judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 8833-8835 of 2019 of K. Meghachandra Singh & Ors. Vs. Ningam Siro & Ors- revised instructions relating to seniority of direct recruits and promotes and inter-se seniority thereof".

The said O.M. is quoted to the extent relevant and germane for the issue (emphasis added).

"4. The law laid down in the N.R. Parmar case relating to determination of inter se seniority between direct recruits and promotes in a grade/post was reviewed by the Hon'ble Supreme Court of India in Civil Appeal No. 8833-8835 of 2019 [arising out of SLP(C) Nos.19565-19567 of 2019] in the matter of K. Meghachandra

Singh & Ors. Vs Ningam Siro & Ors. In its Order dated 19.11.2019 in CA No. 8833-35/2019 of K. Meghachandra Singh & Ors. Vs Ningam Siro & Ors, the Hon'ble Supreme Court of India has overruled the decision of the Court in NR Parmar case.

5. In para 40 of the Order dated 19.11.2019, the Hon'ble Court inter-alia held that "the law on the issue is correctly declared in J. C. Patnaik (Supra,). 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." Further, in para 38, the Hon'ble court had held as under:

"38. When we carefully read the judgment in N. R. Parmar Supra,), it appears to us that the referred OMs (dated 07.02.1986 and 03.07.1986) were not properly construed in the judgment. Contrary to the eventual finding, the said two OMs 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 OMs 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 OMs.

6. The determination of inter se seniority of direct recruits and promotees, as laid down by the Hon'ble Supreme Court of India, in its Order dated 19.11.2019 in K. Meghachandra Singh case, has been carefully examined in consultation with the Department of Legal Affairs, and the following principles have emerged:-

(i) The rotation of quota, based on the percentage of vacancies allocated to direct recruitment and promotion in the notified recruitment rules/service rules, shall continue to operate for determining vacancies to be filled by the respective quotas in a recruitment year. The term 'recruitment year' shall mean the year in which the vacancy arises. However, inter se seniority between direct recruits and promotees, who are appointed against the vacancies of respective quota, would be reckoned with reference to the



year in which they are appointed i.e. year in which they are borne in the cadre or formal appointment order is issued.

(ii) The terms 'recruitment and appointment' have to be read harmoniously and the determination of seniority for recruits would depend on their actual appointment and not the initiation of recruitment process itself. It thus follows that the seniority of direct recruits and promotees henceforth stands delinked from the vacancy/year of vacancy.

(iii) The source of legitimacy of determination of seniority would be with reference to the date of joining of a person against a vacancy, irrespective of the fact that it may have arisen in the previous year(s) and not being a carried forward vacancy of any quota.

(iv) If adequate number of direct recruits (or promotees) do not become available, "rotation of quotas" for the purpose of determining seniority, would stop after the available direct recruits and promotees are assigned their slots on joining in a particular year.

(v) The term 'available', both in the case of direct recruits as well as promotees, for the purpose of rotation and fixation of seniority, shall be the actual year of appointment after declaration of results/selection and completion of pre-appointment formalities as prescribed.

(vi) Thus, appointees who join in the concerned recruitment year and those who join in subsequent year(s), would figure in the seniority list of the respective years of their being appointed. To that extent it may not be necessary to go into the question of quota meant for direct recruits and promotees to find out as to the year in which the vacancy arose against which the recruitment is made.

7. Based on the above, it has been decided to modify the instructions relating to determination of inter se seniority between promotees and direct recruits as under:

(i) DoPT's O.M. No. 20011/1/2012-Estt.(D) dated 4.3.2014, issued in pursuance of Order dated 27.11.2012 in N.R. Parmar case, is treated as non-est/withdrawn w.e.f. 19.11.2019.

(ii) As the Order dated 19.11.2019 is prospective, cases of inter se seniority of direct recruits and promotees, already decided in terms of O.M. No. 20011/1/2012-Estt.(D) dated 4.3.2014, shall not be disturbed, i.e. old cases are not to be reopened.

(iii) In case of direct recruits and promotees appointed/joined during the period between 27.11.2012 and 18.11.2019 and in which case inter se seniority could not be finalised by 18.11.2019, shall also be governed by the provisions of O.Ms. dated 7.2.1986/3.7.1986 read with OM dated 4.3.2014, unless where a different formulation/manner of determination of seniority has been decided by any Tribunal or Court.

(iv) For cases where the recruitment process has been initiated by the administrative Department/Cadre Authority before 19.11.2019 and where some appointments have been made before 19.11.2019 and remaining on or after 19.11.2019, the inter se seniority of direct recruits and promotees shall also be governed by the provisions of O.Ms. dated 7.2.1986/3.7.1986 read with OM dated 4.3.2014 to ensure equal treatment of such appointees.

(v) For recruitments initiated on or after 19.11.2019 as well as for future recruitments, in addition to cases where the recruitment process has been initiated by the administrative Department/Cadre Authority before 19.11.2019, but where all appointments, subsequent to the initiation of recruitment process, could be made only on or after 19.11.2019, i.e. date of order of Apex Court, the inter se seniority of direct recruits and promotees shall be determined in the following manner-

(a) The rotation of quota based on the percentage of vacancies allocated to direct recruitment and promotion in the notified recruitment rules/service rules, shall continue to operate for determination of vacancies to be filled by the respective quotas in a recruitment year.

(b) Determination of inter-se seniority between direct recruits and promotees, who are appointed against the vacancies of respective quota, would, however, be reckoned with reference to the year in which they are appointed, i.e. year in which they are borne in the cadre or formal appointment order is issued. In case, where the recruitment year is the same as the year of appointment, the appointees shall be given seniority of that year.

(c) Where in case of promotees or direct recruits, the year of appointment is the next year or any year subsequent to the recruitment year, the seniority of such promotees and direct recruits would be determined with reference to the year of their actual joining/appointment to the post, since they were not able to join in the said recruitment year in which the vacancy arose. Thus, they would get seniority of the year in which they actually join, i.e. year in which formal appointment order is issued or they are borne in





the service/cadre and that they shall not get seniority of any earlier year (viz. year of Vacancy/panel or year in which recruitment process is initiated).

d) In terms of OMs dated 7.2.1986/3.7.1986, rotation between promotees and direct recruits for the purpose of determination of inter-se seniority, would be undertaken only to the extent of available direct recruits and promotees in a particular year. The term 'available direct recruits or promotees' appearing in these OMs dated 7.2.1986/3.7.1986, for the purpose of rotation of quota in fixation of inter-se seniority, shall mean the actual number of direct recruits and promotees appointed during the year after declaration of results/selection and completion of pre-appointment formalities as prescribed.

(e) As per (d) above, if adequate number of direct recruits (or promotees) do not become available in a particular year, the "rotation of quotas" for the purpose of determining inter se seniority, would stop after the available direct recruits and promotes are assigned their slots on their appointment/joining in that year.

(f) If no direct recruit is available in a particular year, available promotees would be bunched together in accordance with their position in the panel approved for promotion. Similarly, if no promotee is available in that year, available direct recruits would be bunched together, as per their position obtained in the selection process.

(g) In case, where direct recruits or promotees, as the case may be, belonging to two more selections/panel approved for promotion, join in the same year, then those who have been appointed/joined as a result of earlier selection/panel would be placed senior in the seniority list to those been appointed/joined as a result of a subsequent selection/panel.

(h) Instructions contained in OMs dated 7.2.1986 and 3.7.1986, stand modified to the extent indicated in above paragraphs.

8. These provisions shall come into effect from 19.11.2019 onwards."

Placing the above OM dated 13.08.2021, Ld. Counsel for the applicants in O.A. Nos. 422/2021 and O.A. 219/2020 would vociferously contend that the applicants should be allowed assignment of seniority in terms of this DoPT OM dated 13.08.2021 and consequential promotion order be issued at the earliest.

While learned Counsel for the applicants in O.A.1530 of 2019 would fervently appeal that their objections, in accordance with O.M. dated 09.04.2021, should be disposed of prior to finalisation of any seniority.

5. We heard Ld. Counsels for the parties at length perused the materials on record and anxiously considered the rival contention.

6. The discernible facts are as under:

That, the seniority of Direct Recruits and Promotees are to be determined in strict adherence to the principles laid down in K.Meghachandra's decision (as quoted supra) and the latest guidelines in DoPT in continuation with the said decision.

As there is an apparent conflict in the DOPT O.M. of 13.08.2021 and the O.M. dated 09.04.2021 of the PCIT, inasmuch as while the O.M. dated 09.04.2021 seeks objections against seniority determined in the year 2016 the DOPT O.M. calls for fixation of seniority without inviting objections. The 13.08.2021 O.M., however, clarifies without any ambiguity and ambivalence the manner in which seniority of Direct Recruits and Promotees would be determined.

- (i) That, seniority decided in terms of O.M. dated 04.03.2014 shall not be disturbed.
- (ii) Seniority of Direct Recruits and Promotees appointed or joined between 27.11.2012 and 18.11.2019 where seniority could not be finalized by 18.11.2019 shall be governed by provision of O.M. dated 07.02.1986 read with O.M. dated 04.03.2014, unless a different formulation is prescribed by any Tribunal or Court.

(iii) Where part appointment were granted before 19.11.2019 and the rest after 19.11.2019 of the same recruitment process, inter se seniority of Direct Recruits and Promottees would be governed by O.M. dated 07.02.1986, 03.07.1986, read with O.M. dated 04.03.2014, to ensure equal treatment of the appointees.

(iv) For recruitment initiated on or after 19.11.2019 and future recruitments or, where the process was initiated before 19.11.2019 but completed on or after 19.11.2019, the inter se seniority of Direct Recruits and Promotees shall be determined on the basis of rotation of quota in the manner laid down in the said O.M.

We have noted the implications of O.M.s relating to assignment of quota to the rival groups of direct recruits and promotees included in a year.

7. Having heard Ld. Counsel for the parties and after going through the entire gamut of the case, for the ends of justice and to ensure fairness qua parties, we would only direct that the authorities would dispose of the objections of applicants in O.A.1530 of 2019 and finalize the seniority strictly in terms of the DoPT O.M. dated 13.08.2021, and take necessary steps to grant to all the applicants their subsequent promotions to the next higher post for which admittedly the 45 vacancies mentioned in O.M. dated 09.04.2021 has got raised to 59 in the meantime, to be filled up in the prescribed ratio of 2:1 as per the guidelines on rotation of quota between Promotees and Direct Recruits prescribed in the rules.

The entire exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

We however make it clear that we have not entered into the merits of the individual seniority of the applicants.

8. Accordingly, both the O.As., 219/2020 and 422/2021, as well as M.A.Nos. 183 and 184 of 2021 (arising out of disposed of O.A.No. 1530/2019) are disposed of. M.A.Nos. 161, 317 & 352 of 2021 (in O.A. 422/2021) also stand disposed of. No costs.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

RK