

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.321/2016

Reserved On:17.08.2016

Pronounced On:09.09.2016

HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)

HON'BLE MR. V.N. GAUR, MEMBER (A)

Manmohan Juneja

S/o Late Shri Parshotam Dass

Aged 54 years

R/o A-134, 2nd Floor,

Preet Vihar,

Delhi-110092.

....Applicant

Presently working as Additional Director
General (on deputation) in the office of
DG, Competition Commission of India,
Hudco Vishala Building,
Bhikaji Cama Place, New Delhi.

(Argued by: Shri Vansdeep Dalmi & Shri Parth Goswami,
Advocate)

Versus

1. Union of India,
Through its Secretary,
Ministry of Corporate Affairs,
Government of India,
5th Floor, 'A' Wing, Shastri Bhawan,
New Delhi-110001.
2. The Director (Ad-II)
Ministry of Corporate Affairs,
Government of India,
5th Floor, 'A' Wing, Shastri Bhawan,
New Delhi-110001.
3. Union Public Service Commission,
Through its Secretary,
Dhoulpur House, Shahjahan Road,
New Delhi-110011
(Performa Party)
4. D. Bandopadhyay
Registrar of Companies, 4th Floor,
IFCI Tower 61, Nehru Place,
New Delhi-110019.

....Respondents

(By Advocate : Mr. Ashok Kumar for Respondents No.1 to 3.
Mr. Rais Farooqi for Respondent No.4)

ORDER (ORAL)**Justice M. S. Sullar, Member (J)**

The challenge in this instant Original Application (OA), filed by applicant, Manmohan Juneja, is to the impugned order/seniority list dated 02.12.2015 (Annexure A-1), whereby, Government of India, Ministry of Corporate Affairs (respondent No.1) has placed him under private respondent No.4 and was stated to have unsettled the settled seniority list of Junior Administrative Grade Officers (for brevity "JAG Officers") of Indian Corporate Law Service (for short "ICLS").

2. The matrix of the facts & material, culminating in the commencement, relevant for disposal of present OA, and exposited from record, is that, the applicant joined ICLS Group 'A' as a direct recruit in the Junior Time Scale in the year 1993, on the basis of interview conducted by Union Public Service Commission (UPSC), in the year 1992. Later on, he was promoted to the post of Senior Time Scale, in the year 2003. The Ministry of Corporate Affairs sent a requisition to the UPSC (Annexure A-2) in the month of August, 2007 for filling up 3 (three) direct recruit posts of JAG for the vacancies occurred on 23.01.2006, 21.01.2006 and 27.12.2006 in the Accounts Branch.

3. As a consequence thereof, the UPSC issued advertisement for filling up 3 (three) posts of JAG from direct quota vide advertisement No.4/2008 published in

Employment News of 23-29 February, 2008 (Annexure A-3). There were two parallel sources and modes of appointment to JAG in IGLS whereby 50% of the posts were to be filled by direct recruitment and the remaining 50% by promotion from among the persons holding the post in Senior Time Scale, as per Indian Company Law Service (Recruitment Rules) 1999 (Annexure A-4) (hereinafter to be referred as "ICLS Rules"). In pursuance of the advertisement, the applicant applied for the said post, in direct recruitment quota. He was called for interview on 10.07.2008. The result was declared on 15.10.2008. The applicant was selected at No.2 (Second), whereas Shri J.K. Jolly at No.1 (First) and Mr. M.R. Bhat at No.3 (Third), in the order of merit in the category of direct recruitment.

4. The case of the applicant further proceeds that the requisition/proposal, complete in all respects, for filling up the posts of JAG on departmental promotion, was sent on 17.09.2008 for 1 (one) post against vacancy year 2006-07 and 2 (two) posts against vacancy year 2007-08. Consequently, the DPC was held on 27.01.2009 and the following officers were recommended for promotion in the order of seniority:-

Sl.No.	Name	Vacancy year
1.	Shri R.V. Dani	2006-07
2.	Shri D. Bandopadhyay	2007-08
3.	Shri V. Selveraj	2007-08

5. Thus, Shri D. Bandopadhyay (respondent No.4) was promoted on the post of JAG, for the vacancy of the year

2007-08 for which intimation to the UPSC was sent for the first time on 17.09.2008. Hence, the recruitment year for purpose of determining, inter se, seniority for the said post was 2008-09. The DPC for promotion to the post of JAG for recruitment year 2008-09 was held on 27.01.2009 and accordingly, respondent No.4 joined the post of JAG on 05.02.2009 for the recruitment year 2008-09.

6. Sequelly, the applicant joined the post of JAG on 07.11.2008 for the recruitment year of 2007-08, whereas respondent No.4 joined the post of JAG on 05.02.2009 for the recruitment year 2008-09. It was pleaded that thereafter, the respondents circulated provisional seniority list as on 06.02.2009 of JAG on 09.02.2009 for the first time and other two direct recruits were interspaced with the promotes from Sl.No.23 to 30 as under:-

Sl.No.	Name	Vacancy Year
23.	Shri B.A.M.P. Ratnasami	D.P. against 2004-05
24.	Shri J.K. Jolly	DR against 2005-06
25.	Shri D.K. Gupta	DP against 2005-06
26.	Manmohan Juneja	DR against 2005-06
27.	M.R. Bhat	DR against 2006-07
28.	Shri R.V. Dani	DP against 2006-07. DPC dated 27.01.2009. Requisition sent on 17.09.2008.
29.	Shri D. Bandhopadhyay	DP against 2007-08. DPC dated 27.01.2009 for which requisition was sent on 17.09.2008.
30.	Shri V. Selvaraj	DP against 2007-08. DPC dated 27.01.2009 for which requisition was sent on 17.09.2008.

In this manner, the applicant claimed that he is senior to Respondent No.4. The final seniority list as on 06.02.2009

was circulated on 07.07.2009 by the Ministry, wherein respondent no.4 was shown junior to the applicant. The order of seniority, as circulated in the provisional seniority list published on 09.02.2009 was maintained. Thereafter, the respondent No.1 again circulated seniority lists, vide orders dated 26.05.2011, 06.04.2011, 01.02.2012, 07.11.2012, 10.01.2013 and 28.05.2015 (Annexure A-6 Colly.) of JAG, wherein respondent No.4 sent his representation to alter the placement of officer in the seniority list which was found to be devoid of merits, and was rejected vide letter dated 26.05.2011 by the competent authority.

7. Levelling a variety of allegations and narrating the sequence of events, in detail, in all, the applicant claimed that the impugned action of respondents, placing him under respondent No.4, in the impugned seniority list is arbitrary, illegal and without jurisdiction. Hence, he preferred the instant OA, to challenge the impugned order (seniority list) dated 02.12.2015 (Annexure A-1), on the following grounds, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985:-

5.1 Because the action of the Respondent No.1 in preparing the seniority list vide the impugned order dated 02.12.2015 of Junior Administrative Grade of Indian Corporation Law Service Group A is clearly contrary to the law settled by the Hon'ble Supreme Court in the case of UOI vs. N.R.Parmar. Thus the said seniority list is liable to be quashed.

5.2 Because the Respondent No.1 vide the impugned office Order dated 2.02.2015 has unsettled the already settled Seniority list of Junior Administrative Grade of Indian Corporate Law Service Group contrary to the judgment of the Hon'ble Supreme Court and bereft of the criteria to determine inter se seniority as postulated in the Office Memorandum dated 7.02.1986, 3.07.1986 and 4.03.2014 issued by the DOPT. Resultantly D. Bandopadhyay who was promoted against the Recruitment Year 2008-09 against the 2007-08 vacancies year has come over the applicant recruited in recruitment year 2007-08 against vacancies of 2005-06.

5.3 Because the Respondent No.1 has despite the various representations of the Applicant failed to consider that the seniority of the Applicant qua the Respondent No.4 is not affected by the non-est/ void notification dated 3.03.2008 and is maintained by the operative office Memorandum dated 7.02.1986, 3.07.1986 and 4.03.2014 issued by the DOPT.

5.4 Because the Respondent No.1 has failed to notice that the Applicant has been appointed for the post of JAG in Recruitment year 2007-2008 whereas the Respondent No.4 has admittedly been appointed in the Recruitment year 2008-2009, hence the Respondent No.4 can never be placed above the Applicant. In other words, the inter se seniority of the Applicant and the Respondent No.4 will have be determined along with the other appointees (Direct Recruits and Promotees) on 'rota and 'quota' basis as per their respective Recruitment year.

5.5 Because the Respondent No.1 has failed to appreciate that inter se seniority among direct recruits and promotes is to be determined in the same Recruitment year i.e. the year of initiation of the recruitment process irrespective of the vacancy year for which the appointment has been made.

5.6 Because the Respondent No.1 has issued the impugned Office Order dated 2.12.2015 without considering that the initiation of the recruitment process in the case of the Applicant (Direct Recruit) commenced in the Recruitment year 2007-2008 i.e. 23.08.2007 which is the date of sending the requisition for filling up vacancies to the recruiting agency in the case of direct recruits; whereas in the case of the Respondent No.3, the recruitment process was initiated in the Recruitment year 2008-2009 i.e. 17.09.2008 which is the date on which the complete proposal in all respects was sent to the Respondent No.3 (UPSC) for convening of DPC to fill up the vacancies.

5.7 Because the impugned OM dated 02.12.2015 is self-contradictory as in one hand it is stated to be based on the basis of the Orders of Hon'ble Supreme Court on Parmar's case and DOPT OM dated 04.03.2014 but on the other hand the principles relied upon and stated in para 3 of OM dated 02.12.2015 are against and in complete dissonance of the principle of inter-se seniority settled by the Hon'ble Supreme Court in Parmar's case and also by DOPT in OM dated 4.3.14.

5.8 Because the Respondent No.1 has issued the impugned Order dated 2.12.2015 on the basis of 'determination of the batch year of Junior time scale officers' which is an erroneous test and directly contrary to the judgment passed by the Hon'ble Supreme Court and furthermore in the teeth of the operative office Memorandum dated 7.02.1986, 3.07.1986 and 4.03.2014 issued by the Ministry of Personnel, Public Grievances and Pension (DOPT).

5.9 Because the requisition to fill the vacancies of 2005-06 against for which the Applicant was recruited, was sent in 2007-08 (on 23.08.2007) thus the Recruitment year for the applicant is 2007-08. Whereas, admittedly, the requisition for D.Bandopadhyay was sent on 17.09.2008 for the first time and thus the Recruitment year for him is 2008-09 and resultantly the Respondent No.4, Shri D.Bandopadhyay, cannot be interspaced with the officers recruited in RY 2007-08. Consequently, the Respondent No.4 (D. Bandopadhyay) ought to be interspaced with recruitment made in the year 2008-09 which was so rightly done in the seniority lists issued from 2009 till the last issued on 28.05.2015. Thus, the re-opening of seniority as in impugned Order dated 02.12.2015 is legally unsustainable and hence bad in the eyes of law.

5.10 Because the Respondent No.1 failed to consider that the seniority of the Applicant was not given as per DOPT OM dated 03.03.2008 which has been declared as void ab-initio. On the contrary, the seniority of the applicant was already settled in terms of instructions contained in DOPT OM dated 07.02.1986/03.07.1986 and thus was not required to be unsettled in view of the instructions contained in Para 5 DOPT OM dated 4.3.2014.

5.11 Because without prejudice to the aforesaid, the impugned OM dated 02.12.2015 is illegal in as much as, no provisional list as on 02.12.2015 had been issued and thus denying the right to the Applicant and all other affected officers to represent on the matters of law and facts relied upon by the Respondents in the impugned Order dated 02.12.2015. It is pertinent to mention herein that the matters of facts given in impugned OM dated 2.12.2015 were never intimated to the Applicant or mentioned in any of the earlier seniority lists and thus the Respondents No. 1 & 2 have acted against the principles of natural justice by not circulating a provisional seniority list before issued the impugned Order dated 2.12.2015.

5.12 Because the Respondents have not heeded to the representation made by the Applicant. So much so, the impugned Order only deals with the representations in a scanty manner mentioning only a part of the averments made in the detailed representations. Hence, without prejudice to the aforesaid grounds, the impugned Order dated 2.12.2015 is without application of mind and unsustainable in view of the operating Office Order dated 7.02.1986, 3.07.1986 & 4.03.2014 issued by the DOPT.

5.13 Because the action of the Respondent No.1 & 2 violates the fundamental rights guaranteed to the Applicant under Article 14 of the Constitution of India.

5.14 Because the action of the Respondent No.1 and 2 is bad in law and directly impinges and affects the vested rights of the Applicant of being senior to the Respondent No.4 in view of the prevailing legal position.”

8. However, the respondents refuted the claim of the applicant. The respondents No.1 & 2 filed their separate reply, wherein it was pleaded that seniority list of JAG level officers of ICLS as on 01.01.2013 was issued on 28.05.2015 in continuation of provisional seniority list issued on 10.01.2013 based on OM dated 03.03.2008. However, in pursuance of judgment of Hon’ble Apex Court in case **N.R. Parmar Vs. U.O.I. & Others (Civil Appeal No.7514-7515/2005)**, the DOP&T issued OM dated 04.03.2014 wherein the OM dated 03.03.2008 was to be treated as non-existent/void-ab-initio. It was alleged that the OM dated 03.07.1986 needs to be followed for determination of inter-se seniority of direct recruits and departmental promotes against the vacancies of a recruitment year. Therefore, the seniority list of JAG level officer of ICLS, as on 01.04.2015, was issued vide OM dated 02.12.2015 (Annexure R-1), in terms of instructions of DOP&T dated 03.07.1986.

9. Likewise, the respondent No.4 has filed his separate written statement, raising certain preliminary objections of maintainability of the OA, locus standi and cause of action of the applicant. The impugned seniority list was stated to be valid as there is no illegality in it and was prepared in accordance with the directions contained in **N.R. Parmar’s case** (supra). The private respondent No.4, mentioned that

it was considered imperative, to provide for a time schedule for convening DPC, not only in time but in sufficient advance also, so as to utilize the prepared panel as and when vacancy arise during the course of vacancy year. The purpose of panel is to utilise it for providing promotion to the officer concerned, named in the panel for the relevant panel year against the vacancies arising within the same panel/vacancy year in view of OMs dated 04.03.2014 and 23.04.2015 of DOP&T. Hence, the seniority of respondent No.4 was correctly fixed, as relevant for the year 2007-08.

10. According to private respondent No.4, the applicant has not raised any objection thereto, but in regard to OM dated 02.12.2015 (Annexure R-1), the applicant has raised the objection which exhibits his self-contradictory approach and indicates his ulterior motive in this matter. It was pleaded that in the prayer clause also, the applicant did not pray for revisiting the said seniority list of the then Junior Time Scale Officers at Sl.No.3 to 14 since the same was subsequently followed for determining seniority of respondent No.4. Therefore, the applicant has accepted the said seniority on the basis of panel year for the 12 Junior Time Scale Officers, while he has objection to the seniority of respondent No.4.

11. Virtually acknowledging the factual matrix and reiterating the validity of the impugned order/seniority list (Annexure A-1), the respondents have stoutly denied all

other allegations and grounds contained in the OA and prayed for its dismissal.

12. Controverting the allegations pleaded in the reply of the respondents and reiterating the grounds contained in the OA, the applicant filed his rejoinder, wherein it was additionally pleaded that as per 5(e) of DOP&T OM dated 04.03.2014, initiation of recruitment process against the vacancy year would be the date of sending requisition for filling up the vacancies to the recruiting agency, in the case of direct recruits. In case of promotes, the date on which a proposal, complete in all respects, is sent to UPSC/Chairman-DPC, as the case may be, for convening of DPC to fill up the vacancies through promotion, would be the relevant date to determine the seniority between the contesting parties. That is how we are seized of the matter.

13. Having heard the learned counsel for the parties for quite some length, having gone through the record with their valuable help and after bestowal of thoughts over the entire matter, we are of the firm view that instant OA deserves to be accepted for the reasons mentioned hereinbelow.

14. What cannot possibly be disputed here is that the Services of Members of ICLS, including the applicant and private respondent No.4, are governed by the ICLS Rules.

15. As per Rule 3, the service shall comprise 4 (four) grades, namely, (i) Senior Administrative Grade (ii) Junior Administrative Grade (iii) Senior Time Scale (iv) Junior Time

Scale. In each grade, except the Senior Administrative Grade, there shall be two branches, namely, the Accounts Branch and Legal Branch. According to Rule 4, the persons appointed to the duty posts under Rule 5 and persons appointed to the duty posts under Rule 6, shall be the Members of the Service. As per Rule 4(2), persons belonging to the Super Time Grade-I, Grade-III and Grade-IV of the service, shall, on the commencement of these Rules, be deemed to be the Members of the Service in the Senior Administrative Grade, Junior Administrative Grade, Senior Time Scale & Junior Time Scale respectively and every member of the service, other than a Member in the Senior Administrative Grade, shall be assigned to either of the two branches of the Service and posts in the Legal Branch and Accounts Branch, shall be tenable by the members of the respective branches. According to Rule 5 the incumbents, those who are holding posts on regular basis before the commencement of these rules, shall be deemed to have been appointed to the corresponding posts and grades in the service under these rules. Rule 6 postulates that 50% of the posts shall be filled by direct recruitment and the remaining 50% shall be filled by promotion of regular incumbents of the posts mentioned in Schedule III. Rule 8 deals with the promotion of the members of the service, whereas Rule 12 deals with appointment to the Service.

16. Similarly, Rule 11 posits that a seniority list of members of the service in the Senior Administrative Grade shall be

maintained separately, a separate seniority list of members of the service in the Junior Administrative Grade, Senior Time Scale and Junior Time Scale shall be maintained for each of the two branches and seniority of the members of the service shall be determined in accordance with the **general instructions** issued by the Central Government from time to time.

17. Initially, general principles/instructions for determining the seniority in the Central Services, are contained in an Office Memorandum (OM) dated 22.11.1959, issued by the Government of India. Paragraph 6 of this OM, laid down the manner of determining inter-se seniority between direct recruits and promotes in the following manner:-

“6. Relative seniority of Direct Recruits and Promotees:

The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively in the Department Rules.”

18. That means, the quota between promotees and direct recruits was to be read in the seniority rule. The OM also provided for a definite rotation of seniority points (rota) between promotees and direct recruits, based on “quota” and “rota” principle (“rotation of quotas”).

19. Sequel, the method to determine the inter-se seniority between the direct recruits and promotees, was modified by an OM dated 07.02.1986, which reads as under:-

“Office Memorandum

Subject: General Principles for determining the seniority of various categories of persons employed in Central Services.

As the Ministry of Finance etc. are aware, the General Principles for determination of seniority in the Central Services are contained in the Annexure to Ministry of Home Affairs

O.M. No. 9/11/55-RPS dated 22nd December 1959. According to Paragraph-6 of the said Annexure, the relative seniority of direct recruits and promotees shall be determined according to rotation of vacancies between the direct recruits and the promotees, which will be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules. In the Explanatory Memorandum to these Principles, it has been stated that a roster is required to be maintained based on the reservation of vacancies for direct recruitment and promotion in the Recruitment Rules. Thus where appointment to a grade is to be made 50% by direct recruitment and 50% by promotion from a lower grade, the inter-se seniority of direct recruits and promotees is determined on 1:1 basis.

2. While the above mentioned principle was working satisfactorily in cases where direct recruitment and promotion kept pace with each other and recruitment could also be made to the full extent of the quotas as prescribed, in cases where there was delay in direct recruitment or promotion, or where enough number of direct recruits or promotees did not become available, there was difficulty in determining seniority. In such cases, the practice followed at present is that the slots meant for direct recruits or promotees, which could not be filled up, were left vacant, and when direct recruits or promotees became available through later examinations or selections, such persons occupied the vacant slots, thereby became senior to persons who were already working in the grade on regular basis. In some cases, where there was short-fall in direct recruitment in two or more consecutive years, this resulted in direct recruits of later years taking seniority over some of the promotees with fairly long years of regular service already to their credit. This matter had also come up for consideration in various Court Cases both before the High Courts and the Supreme Court and in several cases the relevant judgement had brought out the inappropriateness of direct recruits of later years becoming senior to promotees with long years of service.

3. This matter, which was also discussed in the National Council has been engaging the attention of the Government for quite some time and it has been decided that in future, while the principle of rotation of quotas will still be followed for determining the inter-se seniority of direct recruits and promotees, the present practice of keeping vacant slots for being filled up by direct recruits of later years, thereby giving them unintended seniority over promotees who are already in position, would be dispensed with. Thus, if adequate number of direct recruits do not become available in any particular year, rotation of quotas for purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees. In other words, to the extent direct recruits are not available, the promotees will be bunched together at the bottom of the seniority list, below the last position upto which it is possible to determine seniority on the basis of rotation of quotas with reference to the actual number of direct recruits who become available. The unfilled direct recruitment quota vacancies would, however, be carried forward and added to the corresponding direct recruitment vacancies of the next year (and to subsequent years where necessary) for taking action for direct recruitment for the total number according to the usual practice. Thereafter, in that year while seniority will be determined between direct recruits and promotees, to the extent of the number of vacancies for direct recruits and promotees as determined according to the quota for that year, the additional direct recruits selected against the carried forward vacancies of the previous year would be placed en-bloc below the last promotee (or direct recruit as the case may be) in the seniority list based on the rotation of vacancies for that year. The same principle holds good in determining seniority in the event of carry forward, if any, of direct recruitment or promotion quota vacancies (as the case may be) in the subsequent years.

4. In order to help the appointing authorities in determining the number of vacancies to be filled during a year under each of the methods of recruitment prescribed, a Vacancy Register giving a running account of the vacancies arising and being filled from year to year may be maintained in the proforma enclosed.

5. With a view to curbing any tendency of under-reporting/suppressing the vacancies to be notified to the concerned authorities for direct recruitment, it is clarified that promotees will be treated as regular only to the extent to which direct recruitment vacancies are reported to the recruiting authorities on the basis of the quotas prescribed in the relevant recruitment rules. Excess promotees, if any, exceeding the share falling to the promotion quota based on the corresponding figure, notified for direct recruitment would be treated only as ad- hoc promotees.

6. The General Principles of seniority issued on 22nd December, 1959 referred to above, may be deemed to have been modified to that extent.

7. These orders shall take effect from 1st March 1986. Seniority already determined in accordance with the existing principles on the date of issue of these orders will not be reopened. In respect of vacancies for which recruitment action has already been taken, on the date of issue of these orders either by way of direct recruitment or promotion, seniority will continue to be determined in accordance with the principle in force prior to the issue of this O.M.

8. Ministry of Finance etc. are requested to bring these instructions to the notice of all the Attached/Subordinate Offices under them to whom the General Principles of Seniority contained in O.M. dated 22.12.1959 are applicable within 2 week as these orders will be effective from the next month.

Sd/-

Joint Secretary to the Govt. of India"
(emphasis supplied)

20. Likewise, the OM dated 07.02.1986 was supplemented by another OM dated 03.07.1986, which, in relevant substance, is as under:-

“No.22011/7/86-Estt.(D)
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel & Training)

dated 3-7-86

OFFICE MEMORANDUM

Subject: SENIORITY – Consolidated orders on.

The undersigned is directed to say that instructions have been issued by this Department from time to time laying down the principles for determining seniority of persons appointed to services and posts under the Central Government. For facility of reference, the important orders on the subject have been consolidated in this Office Memorandum. The number and date of the original communication has been quoted in the margin so that the users may refer to it to understand fully the context in which the order in question was issued.

SENIORITY OF DIRECT RECRUITS AND PROMOTEES
(MHA O.M.No.9/11/55-RPS dated 22.12.59).

2.1 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 U.P.S.C or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection.

2.2	XXX	XXXX	XXX
2.3	XXX	XXX	XXX

2.4.1 The relative seniority of direct recruits and of promotee shall be determined according to the rotation of vacancies between direct recruits and promotees as per DoP&T's O.M. No.20011/1/2008-Estt.(D) Dated 11th November 2010 shall be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules.

2.4.2 If adequate number of direct recruits do not become available in any particular year, rotation of quotas for the purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees. [DOP&T OM No.35014/2/80-Estt.(D) dt.7.2.86].

In other words, to the extent direct recruits are not available the promotees will be bunched together at the bottom of the seniority list below the last position upto which it is possible to determine seniority, on the basis of rotation of quotas with reference to the actual number of direct recruits who become available. The unfilled direct recruitment quota vacancies would, however, be carried forward and added to the corresponding direct recruitment vacancies of the next year (and to subsequent years where necessary) for taking action for direct recruitment for the total number according to the usual practice. Thereafter in that year while seniority will be determined between direct recruits and promotees, to the extent of the number of vacancies for direct recruits and promotees as determined according to the quota for that year, the additional, direct recruits selected against the carried forward vacancies of the previous year would be placed en-bloc below the last promotee (or direct recruit as the case may be), in the seniority list based on the rotation of vacancies for that year. The same principle holds good for determining seniority in the event of carry forward, if any, of direct recruitment or promotion quota vacancies (as the case may be) in the subsequent year.

21. These instructions were further clarified, vide Office Notes dated 20.12.1999 and 02.02.2000 issued by the Government of India.

22. At the same time, it will not be out of place to mention here, that the subsequent instructions, dated 03.03.2008,

issued by the Government of India, were held to be non-est to the extent that the same are in derogation of the earlier OMs dated 07.02.1986 and 03.07.1986 by Hon'ble Apex Court in case ***U.O.I. & Others Vs. N.R. Parmar and Others (2012) 13 SCC 340.***

23. In pursuance of the judgment of the Hon'ble Apex Court in ***N.R. Parmar's case*** (supra), the Government of India issued instructions dated 04.03.2014, which in substance, is in the following terms:-

"a) DoPT OM No. 20011/1/2006-Estt.(D) dated 3.3.2008 is treated as nonexistent/withdrawn ab initio;

b) The rotation of quota based on the available direct recruits and promotees appointed against the vacancies of a Recruitment Year, as provided in DOPT O.M. dated 7.2.1986/3.07.1986, would continue to operate for determination of inter se seniority between direct recruits and promotees;

c) The available direct recruits and promotees, for assignment of inter se seniority, would refer to the direct recruits and promotees who are appointed against the vacancies of a Recruitment Year;

d) Recruitment Year would be the year of initiating the recruitment process against a vacancy year;

e) Initiation of recruitment process against a vacancy year would be the date of sending of requisition for filling up of vacancies to the recruiting agency in the case of direct recruits; in the case of promotees the date on which a proposal, complete in all respects, is sent to UPSC/Chairman-DPC for convening of DPC to fill up the vacancies through promotion would be the relevant date.

f) The initiation of recruitment process for any of the modes viz. direct recruitment or promotion would be deemed to be the initiation of recruitment process for the other mode as well;

g) Carry forward of vacancies against direct recruitment or promotion quota would be determined from the appointments made against the first attempt for filling up of the vacancies for a Recruitment Year;

h) The above principles for determination of inter se seniority of direct recruits and promotees would be effective from 27.11.2012, the date of Supreme Court Judgment in Civil Appeal No. 7514-7515/2005 in the case of N.R. Parmar Vs. U01 & Ors 2

i) The cases of seniority already settled with reference to the applicable interpretation of the term availability, as contained in DoPT O.M. dated 7.2.86/3.7.86 may not be reopened".

24. Thus, it would be seen that the latest instructions dated 04.03.2014, have further supplemented and clarified the basic instructions dated 07.02.1986 and 03.07.1986, in the matter of determination of seniority between direct recruit and promotee officer, which would have the retrospective effect, in view of ratio of law laid down by the Hon'ble

Supreme Court in case **S.S. Garewal vs. State of Punjab, (1993) Supp (3) SCC 234** wherein it was held (in paras 8 and 9) as under:-

“8 In the alternative, it was urged that the order dated April 8, 1980 could only have prospective operation with effect from the date of issue of the said order and the sub-roster indicated by the said order could be given effect to only from that date and on that basis the first post reserved for Scheduled Castes should go to Balmikis or Mazhabi Sikhs and on that basis also respondent No. 3 was entitled to be placed against point No. 7 in the 100-point roster and Shri G.S. Samra against point No. 9 in the said roster.

9. From a perusal of the letter dated April 8, 1980, we find that it gives clarifications on certain doubts that had been created by some Departments in the matter of implementation of the instructions contained in the earlier letter dated May 5, 1975. Since the said letter dated April 8, 1980 is only clarificatory in nature, there is no question of its having an operation independent of the instructions contained in the letter dated May 5, 1975 and the clarifications contained in the letter dated April 8, 1980 have to be read as a part of the instructions contained in the earlier letter dated May 5, 1975. In this context it may be stated that according to the principles of statutory construction a statute which is explanatory or clarificatory of the earlier enactment is usually held to be retrospective. (See: Craies on Statute Law, 7th Ed., p.58). It must, therefore, be held that all appointments against vacancies reserved for Scheduled Castes made after May 5, 1975 (after May 14, 1977 in so far as the Service is concerned), have to be made in accordance with the instructions as contained in the letter dated May 5, 1975 as clarified by letter dated April 8, 1980. On that view, the appointment of Shri Balwant Rai in 1979 has to be treated to be an appointment made under the said instructions and operation of these instructions cannot be postponed till April 8, 1980.....”

In view of the above, it is not possible for us to accept that the OM dated 3.3.2008, would only apply prospectively. We are also satisfied, that the OM dated 3.3.2008 which is only a “clarification” of the earlier OM dated 3.7.1986, would relate back to the original instrument, namely, the OM dated 3.7.1986”.

25. Again, the same view was reiterated by the Hon’ble Apex Court in **N.R. Parmar’s case** (supra), wherein it was ruled that “a clarification, only explains the true purport of an existing instrument. As such, a clarification always relates back to the date of the instrument which is sought to be clarified”.

26. Meaning thereby, the seniority of the applicant (direct recruit) (DR) and private respondent No.4 (promotee officer) (PO), would be governed by and required to be determined on the basis of, OMs dated 07.02.1986 and 03.07.1986 and subsequent indicated clarifications. Moreover, the learned counsel for the parties are at *ad idem* that the seniority of direct recruit (applicant) and promotee (respondent No.4) in the instant case, shall have to be determined, according to

the rotation of vacancies between them, in view of the indicated OMs, notes and clarifications explained by Hon'ble Supreme Court in ***N.R. Parmar's case*** (supra).

27. Therefore, a conjoint and meaningful reading of the indicated OMs, notes and clarifications, would reveal, that the relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies, between direct recruits and promotee officers, which shall be based on the quota of vacancies reserved for direct recruitment and promotion respectively. If adequate number of direct recruits, do not become available in any particular year, rotation of quotas for the purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees, as the case may be. In other words, to the extent direct recruits are not available, the promotees will be bunched together at the bottom of the seniority list below the last position up to which it is possible to determine seniority, on the basis of rotation of quotas with reference to the actual number of direct recruits who become available.

28. Sequelly, the relevant date for determining the vacancy is the actual date of initiation of recruitment process, by sending of requisition for filling up the vacancies to the recruiting agency in the case of direct recruits. Whereas, in the case of promotees, the date on which a proposal, complete in all respects, is sent to UPSC/Chairman-DPC for

convening of DPC to fill up the vacancies through promotion, would be the relevant date. That means, the initiation of recruitment process, for any of the modes viz. direct recruitment or promotion, would be deemed to be the initiation of recruitment process for the other modes as well. This matter is no more res integra and is now well settled.

29. An identical question came to be decided and indicated OMs & notes etc. were considered by Hon'ble Apex Court in ***N.R. Parmar's case*** (supra). Having interpreted the pointed instructions/OMs, it was authoritatively ruled that the inter-se seniority between the direct recruits and promotees, would be on the principle of quota and rota (rotation of quota) and the relevant date for determining the vacancy is the actual date **of initiation of recruitment process**. It was also held that it is not necessary that the direct recruits for vacancy of a particular recruitment year, should join within the recruitment year (during which the vacancies had arisen) itself. As such, the date of joining would not be a relevant factor for determining seniority of direct recruits. It would suffice, if action has been initiated for direct recruit vacancies, within the recruitment year in which the vacancies had become available. This is so, because delay in administrative action, it was felt, could not deprive an individual of his due seniority. **As such**, initiation of action for recruitment within the recruitment

year would be sufficient to assign seniority to the concerned appointees in terms of the “rotation of quotas” principle, so as to arrange them with other appointees (from the alternative source), for vacancies of the same recruitment year, in the manner indicated hereinabove.

30. Therefore, the facts of the case are neither intricate nor much disputed, and fall within a very narrow compass. Such this being the material on record and legal position, now the short and significant question, for our consideration, that arises for determination in this case is, as to whether the impugned order/changed seniority list placing the applicant (DR) below respondent No.4 (PO) is valid or not?

31. Having regard to the rival contentions of the learned counsel for the parties, to our mind, the answer must obviously be in the negative, in this regard.

32. It is not a matter of dispute that in the instant case the final seniority list was circulated on 07.07.2009 by the concerned Ministry, wherein applicant (DR) was shown senior to respondent No.4 (PO). The position of order of seniority, so mentioned in the provisional seniority list, was maintained. Admittedly, the respondent No.1, circulated seniority list as on 06.02.2009, vide order dated 07.07.2009, wherein applicant (DR) was placed at Sl.No.26 whereas private respondent No.4 (PO) was shown at Sl.No.29. Similarly, in the seniority list, as on 01.01.2010,

circulated vide order dated 26.05.2010, the applicant (DR) was shown at Sl.No.21 whereas respondent No.4 (PO) was shown at Sl.No.25. In the seniority list as on 01.01.2011, circulated vide order dated 06.04.2011, the applicant (DR) was shown at Sl.No.16 whereas private respondent No.4 (PO) was shown at Sl.No.20, similarly in the seniority list as on 01.01.2012 circulated vide order dated 01.02.2012, the applicant (DR) was shown at Sl.No.14 whereas respondent No.4 (PO) was shown at Sl.No.18. In the same manner, in the seniority list as on 01.01.2013, circulated vide order dated 10.01.2013, applicant (DR) was shown at Sl.No.8 whereas respondent No.4 (PO) was shown at Sl.No.11 and in the seniority list as on 01.01.2013 circulated vide order 28.05.2015, applicant (DR) was shown at Sl.No.8 whereas respondent No.4 (PO) was shown at Sl.No.11 (Annexures A-6 Colly.).

33. Meaning thereby, the applicant remained throughout senior to respondent No.4, in all the pointed seniority lists (Annexures A-6 Colly), circulated by the official respondents.

34. Surprisingly enough, the official respondents, took a somersault and abruptly changed the impugned seniority list dated 02.12.2015 (Annexure A-1), placing applicant (DR), for the first time, junior (at Sl. No.7) at his back, whereas respondent No.4 (PO) was shown senior (at Sl.No.4), without any rhyme or reasons.

35. Ex-facie, the main contention/explanation, pressed into service by the official respondents, that since the earlier seniority lists (Annexure A-6 Colly) between the rival parties, were circulated on the basis of instructions dated 03.03.2008 which were set aside by Hon'ble Supreme Court in **N.R. Parmar's case** (supra), so impugned revised seniority list was prepared, is neither tenable nor the observations of this Tribunal in case **Dharamvir Yadav and Others Vs. UGC & Others** in **OA No.3194/2010**, decided on 03.11.2010, relied upon by respondent No.4, wherein, the inter-se seniority by way of promotion and departmental competitive test, between promotes (promotees selected by the different sources) was determined, entirely on a different context and under the different rules/instructions, is at all applicable to the present controversy between direct recruit and promotee officer, and deserve to be repelled for following more than one reasons.

36. As is evident from the record, that the recruitment process by way of direct recruitment in the case of the applicant was initiated on 23.08.2007, for the vacancy of the year 2005-06, recruitment year 2007-08 and the applicant joined the post of JAG on 07.11.2008, whereas the recruitment process by way of promotion, in case of respondent No.4, started on 17.09.2008, for a vacancy year 2007-08 and recruitment year is 2008-09. He joined on the

post of JAG on 05.02.2009. Therefore, in that eventuality, it cannot possibly be saith by any stretch of imagination that the applicant (DR) would be junior to respondent No.4 (PO) in any manner. Indeed, the impugned seniority list dated 02.12.2015 (Annexure A-1), which was abruptly changed by ignoring the relevant instructions with impunity, that too, at the back of the applicant, cannot and should not possibly be maintained in any manner and deserve to be set aside, in the obtaining circumstances of the case.

37. Moreover, the instructions dated 03.03.2008 depicted that, the inter-se seniority of direct recruits and promotees is to be fixed on the basis of rotation of quota of vacancies, the year of availability, both in the case of direct recruits as well as the 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.**

38. In other words, as per these instructions, the relevant date for fixation of seniority would be the actual year of appointment. As depicted hereinabove, in the present case, the date of appointment of applicant (DR) is 07.11.2008 in recruitment year 2007-08, whereas date of appointment in the case of private respondent No.4 (PO) is 05.02.2009, in the recruitment year 2008-09. Therefore, it remained an unfolded mystery as to how and in what manner applicant

(DR) was placed, below private respondent No.4 (PO) by official respondents, in the impugned seniority list, in the garb of instructions dated 03.03.2008, particularly when they have rightly placed him (applicant) (DR) over and above respondent No.4 (PO) in all the previous circulated seniority lists (Annexure A-6 Colly.).

39. There is yet another aspect of the matter, which can be viewed entirely from a different angle. Even the instructions dated 07.02.1986 and 04.03.2014, posit, that the cases of seniority already determined in accordance with the principles on the date of issue of these orders, will not be reopened. In respect of vacancies, for which recruitment action has already been taken, on the date of issue of these orders, either by way of direct recruitment or promotion, seniority will continue to be determined in accordance with the principle in force prior to the issue of this O.M. Thus, seen from any angle, the official respondents did not have the power to suddenly unsettle the already settled seniority list, placing the applicant (DR) below private respondent No.4 (PO).

40. On the contrary, the pointed action of the official respondents, of abruptly changing the seniority list, in the indicated manner, inculcating & perpetuating injustice and causing great prejudice to the applicant, at his back, not only it smacks arbitrariness and colourable exercise of power on their part, but at the same time, it is arbitrary

and without jurisdiction as well, which is not legally permissible.

41. Therefore, the ratio of law laid down in the indicated judgments of Hon'ble Apex Court is *mutatis mutandis* applicable in the instant controversy and is a complete answer to the problem in hand and the contrary arguments of learned counsel for respondents "*stricto-sensu*" deserve to be and are hereby repelled, under the present set of circumstances.

42. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

43. In the light of the aforesaid reasons, the instant OA is accepted. The impugned order/Seniority List dated 02.12.2015 (Annexure A-1) is hereby quashed. At the same time, the official respondents are directed to prepare the fresh seniority list, placing applicant (DR), over and above the private respondent No.4 (PO), at appropriate stage, in view of the aforesaid observations and in accordance with law, forthwith. However, the parties are left to bear their own costs.

(V.N. GAUR)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)
09.09.2016

Rakesh