

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-338/2012

Reserved on : 10.08.2015.

Pronounced on : 17.08.2015.

**Hon'ble Mr. G. George Paracken, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)**

Sh. O. Venkateswarlu,
F-1, Plot No.124,
Sector-4, Vaishali,
Ghaziabad (UP).

.... **Applicant**

(through Sh. Padma Kumar S., Advocate)

Versus

1. Union of India through
Secretary,
Department of Legal Affairs,
Ministry of Law and Justice,
Shastri Bhawan, 4th Floor,
New Delhi-1.
2. Secretary,
DoP&T,
North Block, New Delhi-1.
3. Sh. Rama Joga Rao Kasibatla,
Deputy Legal Adviser,
Department of Legal Affairs,
Ministry of Law and Justice,
Shastri Bhawan, 4th Floor,
New Delhi-1.
4. Sh. O.P. Bagri,
Deputy Legal Adviser,
Department of Legal Affairs,
Ministry of Law and Justice,
Shastri Bhawan, 4th Floor,
New Delhi-1.
5. Sh. Ramesh Chander,
Deputy Legal Adviser,
Department of Legal Affairs,
Ministry of Law and Justice,

Shastri Bhawan, 4th Floor,
New Delhi-1.

.... Respondents

(through Sh. Rajesh Katyal, Advocate)

ORDER

Mr. Shekhar Agarwal, Member (A)

UPSC issued Employment Notification No. 16/2001 in the Employment News dated 25-31 August, 2001 inviting applications for the post of Assistant Legal Adviser in the Department of Legal Affairs, Ministry of Law and Justice. The applicant applied for the same and was interviewed by UPSC on 02.04.2002. The result was declared on 12.04.2002 and the applicant was found to be successful. He joined the post of Assistant Legal Adviser on 02.06.2002. According to the applicant, UPSC issued another advertisement bearing No. 22/2001 calling for candidates for the post of Assistant Legal Adviser. Interviews pursuant to the aforesaid advertisement were held in the last week of June/first week of July 2002. The selected candidates joined the post thereafter i.e. after joining of the applicant. On 02.05.2003, Department of Legal Affairs issued a draft seniority list in which the applicant was shown below the private respondents No. 3 to 5, who had been selected pursuant to UPSC Advertisement No. 22/2001 and who had joined the post much after the applicant. The applicant submitted a representation against the aforesaid seniority list and even met high ranking officers of the

department. Another draft seniority list was circulated by the department on 28.12.2005 in which the same position continued. The applicant then met the Law Secretary on 06.06.2006 and also submitted a representation. On 17.07.2008, another seniority list was circulated in which the applicant still continued to be placed below private respondents. The applicant was then away on deputation for three years. On his return from deputation, he again submitted a representation on 20.01.2011. Thereafter, he filed OA No. 1381/2011. The respondents filed their reply in July, 2011 in which they stated that the final seniority list had been issued on 14.01.2009. The applicant then moved MA No. 2613/2011 for amending the O.A. and impugning the final seniority list in the same. However, on 08.11.2011, this Tribunal granted liberty to the applicant to file a fresh O.A. incorporating the relief sought in MA No. 2613/2011. Hence, the applicant has filed the present O.A. seeking the following relief:-

"(a) Quash and set aside the impugned seniority list dated 14.1.2009 to the extent where the applicant was shown junior to the private respondents.

(b) Direct the official respondents to assign the seniority to the Applicant above private respondents in terms of the OM of 3.7.1986 and the law laid down by the Hon'ble Supreme Court.

(c) A direction to grant the Applicant all consequential benefits.

(d) Any other relief which this Hon'ble Tribunal may be pleased to pass under the facts and circumstances of the case."

2. The contention of the applicant is that the official respondents have determined the seniority of private respondents de hors the instructions governing determination of the seniority of direct recruits. Admittedly, the seniority has been determined on the principle governing the fixation of inter-se-seniority between direct recruits and promotees whereas both the applicant and private respondents involved in this controversy were direct recruits and the instructions applied by the respondents were not applicable in their cases. The applicant has further stated that relative seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment on the recommendation of UPSC and persons appointed as a result of an earlier selection are senior to those appointed as a result of subsequent selection. In the present case, as the dates mentioned above would reveal not only the selection of the applicant was held earlier but he had also joined the post before the private respondents. Hence, there was no justification in placing the private respondents above him in the seniority list. Relying on the judgment of Hon'ble Supreme Court in the case of **A.P.P.S.C. Vs. Sarat Chandra**, (1990) SCC 669, the applicant has stated that the Hon'ble Supreme Court has held that the process of selection begins with the issuance of advertisement and ends with the preparation of select list for appointment.

2.1 The applicant has further stated that the month and year in which vacancy arose was irrelevant for the purpose of seniority which should be determined as per the law laid down by Hon'ble Supreme Court in the case of **Jagdish Ch. Patnaik Vs. State of Orissa**, AIR 1998 SC 1926.

3. In their reply, the respondents have stated that recruitment to the post of Assistant Legal Adviser is made 50% by direct recruitment and 50% by promotion. The vacancies are calculated financial year-wise. Direct recruitment posts are filled through UPSC. As per the guidelines on seniority, persons recruited for a particular panel year are senior to those recruited for a subsequent panel year.

3.1 Further, the respondents have stated that for the vacancy year 2000-2001, 04 vacancies of Assistant Legal Adviser were reported to UPSC through letter No. A-12025/1/2001-Admn.I(LA) dated 23.03.2001. However, these were advertised by UPSC on 24.11.2001. Further, vide letter No. A-12025/4/2001-Admn.I(LA) dated 04.06.2001 respondents reported another vacancy of Assistant Legal Adviser to UPSC for direct recruitment for the year 2001-2002. This post was advertised by UPSC on 25.08.2001. Thus, 04 vacancies of 2000-2001, which were reported to UPSC earlier, were advertised by them later than the single vacancy of Assistant Legal Adviser of 2001-2002. However, since

respondents No. 3 to 5, who were selected for panel year 2000-2001 though recruited later have been placed above the applicant in the seniority list as they belong to earlier panel than the applicant.

3.2 The respondents have gone on to state that this has been done following the observations of Hon'ble Supreme Court in the case of **UOI & Ors. Vs. N.R. Parmar & Ors.**, JT 2012(12)SC 99 wherein it has been, *inter alia*, held that it is not necessary that direct recruits for vacancies of a particular year join within the same recruitment year 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 filling up direct recruitment vacancies within the recruitment year for which the vacancies had become available. This is so because delay in administrative action cannot be allowed to deprive an individual officer of his due seniority. As such, initiation of action for recruitment within the recruitment year would be sufficient to assign seniority to the concerned appointee. It has also been held in **N.R. Parmar's** case that if the process of the recruitment had been initiated during the recruitment year in which the vacancies have arisen, even if the examination for said recruitment is held in a subsequent year and the result is declared in a year later and the selected candidates joined a further year later, the selected candidates shall be entitled to assignment of

seniority with reference to the recruitment year in which the requisition for the vacancies was made. The logic and reasoning given by the Apex Court for stating so was that selected candidates cannot be blamed for administrative delay in completing the process of selection. Apex Court has also opined that initiation of action for recruitment would mean the date of sending the requisition to the recruiting authority. In the instant case requisition for vacancies for the vacancy year 2000-2001 was sent to UPSC on 23.03.2011 i.e. within the same vacancy year. Similarly, requisition for vacancy year 2001-2002 was also sent within the same vacancy year on 04.06.2001. Thus, **N.R. Parmar's** case fully covers the controversy involved in the present case.

3.3 The respondents have also stated that the seniority list was circulated on 17.07.2008. The applicant filed similar objection as had been filed by him in 2003. He was informed that the seniority had been fixed in accordance with the DoP&T instructions and that his representation was time barred. The applicant is, however, seeking to disturb the seniority list that had remained in operation for almost 09 years. The applicant had been sleeping over his rights and according to well established principle of law no benefit can be extended to him as his claim had become time barred.

4. We have heard both sides and have perused the material on record. The respondents have raised a

preliminary objection of this case being time barred. We notice that the final seniority list was issued by them only on 14.01.2009. The applicant has claimed that he had been facing personal tragedies in his family due to the death of his mother and illness of his wife. Moreover, he had also been away on deputation and was not aware of the issuance of the seniority list. It was only after returning from deputation that applicant submitted another representation against the seniority list to the respondents and thereafter filed OA-1381/2011. Considering the circumstances narrated by the applicant, we are inclined to condone the delay and adjudicate this case on merits to render substantive justice.

4.1 The respondents have argued that they have fixed the seniority on the basis of the law laid down by Hon'ble Supreme Court in **N.R. Parmar's** case. On the other hand, learned counsel for the applicant argued that the principles laid down by Apex Court in **N.R. Parmar's** case were applicable for determination of inter-se-seniority of direct recruits vis-à-vis promotees whereas in this case both parties involved were direct recruits. Therefore, **N.R. Parmar's** judgment was not applicable in this case and the seniority has to be determined on the basis of law laid down by Hon'ble Supreme Court in the case of **Jagdish Ch. Patnaik** (supra) as well as the case of **Pawan Pratap Singh and Others** Vs. **Reevan Singh and Others**, (2011) 3 SCC 267. To resolve this

controversy, we have to first decide as to which judgment of Hon'ble Supreme Court would be applicable in the instant case. Admitted position was that as per the affidavit Indian Legal Service Rules, 1957 seniority of the members of the service has to be determined in accordance with the general instructions issued by Central Government in this behalf from time to time. According to consolidated instructions on seniority issued vide DoP&T O.M. No. 22011/7/86-Estt.(D) dated 03.07.1986 the seniority is determined as follows:-

"2.4.1 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 quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules."

This O.M. has consolidated instructions issued earlier by OMs dated 22.11.1959 and 07.02.1986.

On going through the judgment in the case of **Jagdish Ch. Patnaik & Ors.**(supra) we find that this judgment was based on Orissa Service of Engineers Rules, 1941. The seniority rules in that case clearly lay down that seniority would be determined with reference to the date of recruitment. Similarly, in the case of **Pawan Pratap Singh** (supra) the relevant seniority rules were the U.P. Jail Executive Subordinate (Non-Gazetted) Service Rules, 1980. The question before the Court was determination of inter-se-seniority between two sets of direct recruits, the first set comprised vacancies advertised in 1987 but were filled in

1994 and the second set comprised of vacancies of 1990 which were filled in the year 1991. The seniority rule itself expressed that the words date of his appointment would mean the date of his substantive appointment against a clear vacancy. Thus, the factual matrix as well as the seniority rules in both these cases were different from the present case.

4.2 As has been stated earlier, the seniority of Members of Indian Legal Service is to be determined in terms of the general instructions of DoP&T, which do not have any such stipulation. This position has been noted by Hon'ble Supreme Court in Para-31 of their judgment in **N.R. Parmar's** as hereunder:-

"31. The seniority rule applied in Jagdish Ch. Patnaik's case (supra) has been extracted in paragraph 24 of the said judgment. The seniority rule in question, inter alia expressed, that seniority would be determined with reference to the date of recruitment. In Suraj Prakash Gupta's case (supra), the relevant seniority rule was extracted in paragraph 53 which provided, that seniority would be determined with reference to the date of first appointment. The rule itself expressed that the words "date of first appointment" would mean the date of first substantive appointment against a clear vacancy. In Pawan Pratap Singh's case (supra) the question which arose for consideration, related to determination of inter se seniority between two sets of direct recruits. The first set comprised of vacancies advertised in 1987 which came to be filled up in 1994, and the second set comprised of vacancies of the year 1990 which came to be filled up in the year 1991. The controversy in Pawan Pratap Singh's case (supra) was conspicuously different from the controversy in hand. In view of the fact that the seniority rules, as also the factual matrix in the cases relied upon was substantially at variance with the relevant OMs dated 7.2.1986 and 3.7.1986 (which are the subject of interpretation in so far as the present case is concerned), as also the facts of the cases in hand, it is apparent, that the judgments

relied upon by the learned counsel are inapplicable to determine the present controversy."

Thus, the conclusion we arrive at is that the judgments of Hon'ble Supreme Court in cases of **Jagdish Ch. Patnaik** and **Pawan Pratap Singh** (supra) would not apply in this case because they were delivered in the context of seniority rules, which were different from the seniority rules applicable in the instant case.

4.3 Next, we proceed to examine whether the respondents were right in applying **N.R. Parmar's** judgment in this case. On going through the aforesaid judgment, we find that in Para-33 of this judgment, the following is laid down:-

"33. Having interpreted the effect of the OMs dated 7.2.1986 and 3.7.1986 (in paragraphs 20 and 21 hereinabove), we are satisfied, that not only the requisition but also the advertisement for direct recruitment was issued by the SSC in the recruitment year in which direct recruit vacancies had arisen. The said factual position, as confirmed by the rival parties, is common in all matters being collectively disposed of. In all these cases the advertised vacancies were filled up in the original/first examination/selection conducted for the same. None of the direct recruit Income Tax Inspectors herein can be stated to be occupying carried forward vacancies, or vacancies which came to be filled up by a "later" examination/selection process. The facts only reveal, that the examination and the selection process of direct recruits could not be completed within the recruitment year itself. For this, the modification/amendment in the manner of determining the inter-se seniority between the direct recruits and promotees, carried out through the OM dated 7.2.1986, and the compilation of the instructions pertaining to seniority in the OM dated 3.7.1986, leave no room for any doubt, that the "rotation of quotas" principle, would be fully applicable to the direct recruits in the present controversy. The direct recruits herein will

therefore have to be interspaced with promotees of the same recruitment year."

The necessary conditionalities for applying this judgment are that recruitment process for vacancies pertaining to a particular recruitment year should be initiated in the same recruitment year. This would mean that the requisition to the recruiting agency should be sent in the same recruitment year and requisition should not include any vacancies carried forward from previous years but should comprise of only vacancies pertaining to that vacancy year. Thereafter, if the recruitment process is not completed within the same year then the recruits cannot be allowed to suffer on account of administrative delay and must get seniority from the vacancy year against which they have been recruited.

Applying these principles to the present case, we find that requisition for vacancy year 2000-2001 was first sent by the respondents to UPSC on 23.03.2001 i.e. within the same vacancy year. The recruitment process, however, could not be completed before expiry of the vacancy year. Nevertheless, as per the law laid down by Hon'ble Supreme Court in **N.R. Parmar's** case those recruited against this requisition were entitled to get seniority of vacancy year 2000-2001. Since the applicant was recruited for the vacancy year 2001-2002 as per **N.R. Parmar's** judgment, he would be placed below those who were recruited for earlier vacancy year. We are, therefore, of the opinion that the respondents

have correctly applied **N.R. Parmar's** judgment in the instant case.

4.4 Learned counsel for the applicant has also relied on the judgment of a Co-ordinate Bench of this Tribunal in OA-2456/2008 (**Arun Kumar Srivastava Vs. UOI & Ors.**) dated 13.12.2013. However, on going through this judgment, we find that the applicant therein was seeking seniority above the private respondents. His claim was denied on the ground that the result of the private respondents had been communicated earlier and their date of joining on the post was earlier than that of the applicant. In this case, the applicant had no where contended that he had been selected against vacancy pertaining to earlier vacancy year. Hence, the factual matrix of **Arun Kumar Srivastava's** case is entirely different and this judgment cannot be applied in the instant case.

4.5 Learned counsel for the applicant has also argued that **N.R. Parmar's** judgment is applicable only in determination of inter-se-seniority between direct recruits and promotees whereas in the instant case only direct recruits are involved. In our opinion, the ratio laid down by Hon'ble Supreme Court in **N.R. Parmar's** case would apply whenever inter-se-seniority between appointees from two different sources is being considered irrespective of the fact whether they are direct recruits or promotees. This is because the reasoning given in

N.R. Parmar's case by the Apex Court is that if certain posts are to be filled from two different sources and if recruitment from one source though initiated but is not completed in the same year, then recruits from this source cannot be allowed to suffer in the matter of seniority on account of administrative delays. This logic will continue to remain valid irrespective of the fact whether source of recruitment is promotion or direct recruitment.

4.6 Applicant's counsel also stated that as per Para-2.1 of the consolidated orders on seniority issued vide O.M. No. 22011/7/86-Estt.(D) dated 03.07.1986 the relative seniority of all direct recruits is to be determined by the order of merit in which they were selected for such appointment on the recommendations of UPSC and persons appointed as a result of an earlier selection were to be treated senior to those appointed as a result of subsequent selection. Learned counsel argued that in the instant case UPSC advertisement against which the applicant was selected was issued prior to the advertisement against which the private respondents were selected. Moreover, the applicant was interviewed before them and was also selected and appointed before them. Therefore, he should be considered to have been appointed on the basis of an earlier selection and the respondents should be considered to have been appointed as a result of subsequent selection. We are not in agreement

with the learned counsel for the applicant in this regard. In our opinion, earlier selection would mean selection for earlier vacancy year as also selection which has been initiated earlier. The date of completion of the selection process is not material as the selection can be delayed on account of administrative reasons as has happened in this case. It is not disputed by the parties that in this case the vacancies against which the private respondents were appointed pertained to the vacancy year 2000-2001 and requisition for the same was first sent by the respondents department to UPSC on 23.03.2001. On the other hand, the vacancy against which the applicant was recruited belonged to the year 2001-2002 and the requisition for the same was sent on 04.06.2001. Thus, in our opinion, it cannot be held that the private respondents were recruited as a result of the subsequent selection.

5. On the basis of the above analysis, we do not find any merit in this O.A. and the same is dismissed. No costs.

(Shekhar Agarwal)
Member (A)

/Vinita/

(G. George Paracken)
Member (J)